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ABSTRACT

This state plan for the delivery of special education services to exceptional children in Kansas begins with submission statements and certification documents. The plan then presents policy information concerning the following areas: full educational opportunities goal; free, appropriate public education; screening and evaluation; individualized education programs; least restrictive environment; extended school year; suspension/expulsion of handicapped students; related services; facilities; appointment of education advocates/surrogate parents; confidentiality; procedural due process; participation of private school students; placement of exceptional students in private schools; comprehensive system of personnel development; the State Advisory Council for Special Education; special education program evaluation; state aid for special education; federal fund administration; monitoring and complaint procedures; and definitions. (JDD)

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STATE PLAN FOR SPECIAL EDUCATION

Fiscal Years 1991-1993

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June 12, 1990

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Strategic Directions for Kansas Education

The Kansas State Board of Education is charged with the general supervision of public education and other educational interests in the state. While clearly acknowledging the role and importance of local control, the State Board of Education has the responsibility to provide direction and leadership for the structuring of all state educational institutions under its jurisdiction.

The beginning place for determining the mission for the Kansas State Board of Education is the assumption that all Kansas citizens must be involved in their own learning and the learning of others. It is the combined effort of family, school, and community that makes possible the development of a high quality of life. It is the parent who is the first "teacher" of children. As we grow older, we learn that the school, the workplace, and the community support our lifelong learning and our training and retraining. The Board recognizes the responsibility it holds for Kansas educational systems and promoting quality education programs. The mission for Kansas education is:

To prepare each person with the living, learning, and working skills and values necessary for caring, productive, and fulfilling participation in our evolving, global society.

We believe that the strategic directions for the structuring of Kansas education must be organized to:

- involve parents and support their efforts in the education of their children
- expand learner-focused approaches to curricula and instruction that can amplify the quality and scope of learning
- expand career, lifelong learning, and applied technical preparation which is relevant to the changed nature of work in an information society
- strengthen involvement of business and industry, public and private agencies, and community groups to increase the quality of education and the development of Kansas human resources
- strengthen educational quality and accountability through performance-based curricula and evaluation systems
- develop state and local information systems which may be used for systematic feedback for program improvement, evaluation, and sharing
- strengthen positive environments and develop environments which empower learners and staff
- extend and update the professional and leadership excellence of Kansas educators essential for quality education
- extend and expand the effective utilization of information technology which can increase information access for all learners of the state and productive learning for all Kansas educational institutions
- develop learning communities which involve educational institutions, public and private agencies, and community groups in more effective methods of meeting human resource development needs.



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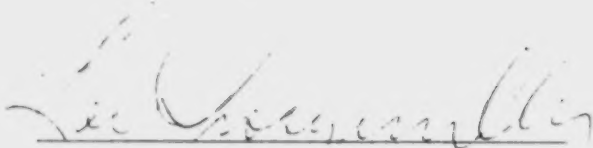
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Part I - Submission Statements and Certification

A. SUBMISSION STATEMENT

I, the undersigned authorized official of the State Educational Agency of Kansas, hereby submit the following State Plan for Fiscal Year 1991-93 under Part B of the Education of the Handicapped Act, as amended.



Signature of Authorized Official

7/1/91

Date

Lee Droegemueller, Commissioner of Education

Type Name and Title

B. ASSURANCE STATEMENTS

The State of Kansas makes the following assurances and provisions as required by Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411-1420):

- I. In carrying out the requirements of 20 U.S.C. 1412, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents or guardians of handicapped children (20 U.S.C. 1412(7)(A)).
- II. Programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 and section 202(1) of the Carl D. Perkins Vocational Education Act, under which there is specific authority for the provision of assistance for the education of handicapped children, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with goal of providing a free, appropriate public education for all handicapped children, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs (20 U.S.C. 1413(a)(2)).
- III. Federal funds made available under the Act: (A) will not be commingled with State funds; and (B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the control of State or local educational agencies) expended for special education and related services provided to handicapped children and will in no case be used to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free, appropriate education, the Secretary may waive in part the requirement of this clause if the Secretary concurs with evidence provided by the State (20 U.S.C. 1413(a)(9)(B) and 20 U.S.C. 1414 (a)(2)(B)(ii)).
- IV. The State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in, or concerned with, the education of handicapped children, including handicapped individuals, teachers, parents or guardians of handicapped children, State and local officials, which: (A) advises the State educational agency of unmet needs within the State in the education of handicapped children; (B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children, and the procedure for distribution of funds under the Act; and (C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under 20 U.S.C. 1418 (20 U.S.C. 1413(a)(12)).
- V. The Education of the Handicapped Act, as amended, will not be construed by the State to permit the State to reduce medical or other assistance available under, or to alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free, appropriate public education for handicapped children within the State.

C. GENERAL STATE APPLICATION - EDGAR ASSURANCE

The State educational agency provides assurances that it will comply with the provisions contained in 34 CFR 76.101.

D. CERTIFICATION REQUIRED BY EDGAR

In accordance with 34 CFR 76.104 the State educational agency assures:

1. That the plan is submitted by the State agency that is eligible to submit the plan.
2. That the State agency has authority under State law to perform the functions of the State under the program.
3. That the State legally may carry out each provision of the plan.
4. That all provisions of the plan are consistent with State law.
5. That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.
6. That the State officer who submits this plan, specified by title in the certification, has authority to submit the plan.
7. That the agency that submits the plan has adopted or otherwise formally approved the plan.
8. That the plan is the basis for State operation and administration of the program.

E. EXECUTIVE ORDER 12372

This State certifies that:

To the best of our knowledge and belief, data in this State plan are true and correct, the document has been duly authorized by the governing body of the State education agency and the State will comply with the attached assurances if the State plan is approved.

F. PUBLIC PARTICIPATION (34 CFR 300.280-300.284 and 34 CFR 76.101 of the EDGAR)

The Kansas State Plan for Special Education was developed by State Department of Education staff with participation of local education agencies, parents, special purpose and youth center school personnel, university staff, professional and advocacy organizations, and other interested persons. Committees composed of the above persons developed different chapters which were then reviewed and edited by State Department of Education staff.

The draft copy of the Kansas State Plan for Special Education was printed April 1, 1990, and copies were distributed to all unified school districts, special education cooperatives and interlocals, special purpose and youth center schools, and parent and advocacy groups. Notification of the dates for public hearing was sent to all of the above entities and was printed in the *Kansas Register* and the newspapers of two Kansas cities, Topeka and Wichita. Copies were also available upon request from the State Department of Education. Public comments on the State plan were accepted from April 1 through May 8, 1990.

Two public hearings were held on the Kansas State Plan for Special Education. The first hearing was held May 7, 1990, in Wichita, Kansas. The hearing was held at the Central Vocational Building, 324 North Emporia at 1:30 p.m. Testimony was given by sixteen persons. The second hearing was held on May 8, 1990, in Topeka, Kansas, at the State Department of Education, 120 East Tenth Street. The hearing began at 1:30 p.m. and testimony was provided by four persons. Summaries of all testimony provided at each hearing are on file in the Special Education Administration Section at the State Department of Education.

I

FULL EDUCATIONAL OPPORTUNITIES GOAL

Goal Statement

A right to education policy statement was made by the Kansas State Board of Education as early as July 6, 1972, when it adopted a set of goals and objectives as a proposed action strategy for the 1970s. These goals and objectives clearly indicated the State's philosophy that all Kansas children and youth, including those classified as *exceptional*, not only have a right to a free public education, but also to an education which is appropriate to their needs.

The State Board of Education adopted in 1984 and revised in 1985 *A Strategic Plan for Kansas Public Education for the Year 2005*. In this plan the Board reaffirmed its support for the elimination of differential access to educational opportunities on the basis of handicapping conditions.

Strategic directions were established in 1989 for restructuring Kansas education so that each person will have the skills and values necessary to contribute to our evolving society.

A management plan has been developed and is updated annually by the Special Education Administration Section of the Kansas State Department of Education (KSDE) to ensure that programs for exceptional students are structured in accordance with these strategic directions. The State Board directions are listed in italics with the corresponding Special Education Administration Section's objectives under each goal in bold print.

The State Board recognizes the responsibility it holds for Kansas education and believes that schools must be organized to carry out the following strategic directions:

- *involve parents and support their efforts in the education of their children**

Objective 5.1. Programs and services for parents of exceptional children will be supported through parent/professional partnerships at the State level.

- *expand learner-focused approaches to curricula and instruction that can amplify the quality and scope of learning**

Objective 1.3. The delivery of special education and related services will incorporate promising educational practices and materials proven effective through research and demonstration.

- *expand career, lifelong learning, and applied technology preparation which is relevant to the changed nature of work in an information society**

Objective 1.5. Exceptional children of all ages will acquire living skills, career, vocational, and academic learning experiences which facilitate each individual's successful transition from public education into adult life.

*Kansas Schools for the 21st Century, July 1989.

- *strengthen involvement of business and industry, public and private agencies, and community groups to increase the quality of education and the development of Kansas human resources**
- *strengthen educational quality and accountability through performance-based curricula and evaluation systems**

Objective 3.1. Development and implementation of a coordinated program evaluation system at the SEA and LEA levels will identify quality practices and facilitate improvement in special education programs and related services.

- *develop state and local information systems which may be used for systematic feedback for program improvement, evaluation, and sharing**

Objective 3.2. A computerized management information system for special education will be operational in KSDE.

- *strengthen positive environments and develop environments which empower learners and staff**

Objective 4.1. An interagency statewide system will allow students with disabilities access to needed assistive technology.

Objective 4.2. The effective use of technology with exceptional students and the provision of adequate resources will be assured through State statutes, regulations, and priorities.

- *extend and update the professional and leadership excellence of Kansas educators essential for quality education**

Objective 4.4. Each local education agency will have a) a technology plan for special education which is a part of or compatible with any plan the LEA may have to using technology in general education programs and b) a commitment to provide the resources necessary for successful implementation.

Objective 7.1. A system for ongoing identification of current and emerging needs which impact personnel development will be implemented.

Objective 7.2. Ongoing support and assistance to LEAs in the development and implementation of inservice programs will be available from the Special Education Administration Section.

- *extend and expand the effective utilization of information technology which can increase information access for all learners of the state and productive learning for all Kansas educational institutions**

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Objective 4.5. Special education and related services personnel will have a support system to assist them in exchanging information, using technology as a management tool, and integrating current technology into instructional programs.

- *develop learning communities which involve educational institutions, public and private agencies, and community groups in more effective methods of meeting human resource development needs**

Objective 1.2. Education, health, and social services programs will be coordinated to assure the availability of a full range of human services for individuals with exceptionalities.

Objective 7.3. A system for the collaboration of IHE, SEA, and LEA personnel development efforts will assure the provision of quality preservice programs for special education personnel.

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II

FREE, APPROPRIATE PUBLIC EDUCATION

Introduction

Exceptional children in Kansas are afforded the right to a free and appropriate public education through the provisions of the Special Education for Exceptional Children Act of 1974, K.S.A. 72-961 to 72-982 and K.S.A. 72-933. The Act *requires each local education agency in the state of Kansas to provide special education services which meet standards and criteria set by the State Board of Education* to all exceptional children who are school age. Although preschool-age handicapped children are excluded from the State mandate, local education agencies may, and are encouraged to, provide special education to this age group. It is the goal of the State Department of Education to locate and identify all preschool handicapped children and to work toward the development of programs which afford them full educational opportunities.

Definitions

1. *Accredited or approved special education program* means a special education program provided by any private, nonprofit corporation or any public or private institution within or without the state which has met standards and criteria set by the State Board of Education.

K.S.A. 72-967

K.A.R. 91-33-1 *et seq.*

2. *Appropriate education* means special education and related services which:
 - a. meet the standards and requirements of the Education of All Handicapped Children Act, Part B (P.L. 99-457), the Vocational Education Act (P.L. 98-524), the Rehabilitation Act of 1973 (Section 504), the Kansas Special Education for Exceptional Children Act (K.S.A. 72-966), and of the Kansas State Board of Education; and
 - b. is provided in accordance with a student's individualized education program (IEP).
3. *Developmental preschool* means a school, operated by a private nonprofit corporation or foundation, that
 - a. serves handicapped children through age seven (K.A.R. 91-12-22 (g)); and
 - b. at which special education services meeting the requirements of Article 12 of Kansas Administrative Regulations are provided.
4. *Exceptional children* means those who differ in physical, mental, social, emotional, or educational characteristics to the extent that special education services are necessary to enable them to progress toward the maximum of their abilities or capacities (K.S.A. 72-962(f)(2)). Included in this definition are those children/youth who are mentally retarded, specific learning disabled, gifted, hearing impaired, language impaired, speech impaired, behaviorally disordered, physically impaired, other health impaired, severely multiply handicapped/deaf-blind, or visually impaired (K.A.R. 91-12-22(j)).

5. *Free education* means special education provided at public expense with no cost to parents other than fees or charges which are charged to all students, such as textbook rental, school lunch, laboratory fees, or student trips.
6. *Handicapped children* means all exceptional children except those identified as gifted (K.A.R. 91-12-22(k)).
7. *Local education agency (LEA)* means any governmental agency authorized or required by state law to provide education to exceptional children, including each school district, special education cooperative, interlocal entity, state school, and state institution (K.A.R. 91-12-22(w)). As used in this section of this plan, the term also includes private special purpose schools and developmental preschools inasmuch as they are included in the monitoring process as a condition of State accreditation or approval.
8. *Nonmedical care* means services not provided by a licensed physician (34 CFR 300.13(b)(4)).
9. *Parent*, as used in this plan, means a natural parent, an adoptive parent, a step parent, a person acting as parent, an education advocate, or a lawful custodian.
 - a. *Person acting as parent* means a person, other than a natural parent who has physical or legal custody of a child, or is by law liable to maintain, care for, or support the child, or is contributing the major portion of the cost of support of the child (K.S.A. 72-962(n)).
 - b. *Lawful custodian* means a parent or a person acting as a parent. If none of the above is known or can be found, an agency shall cause proper proceedings to be instituted pursuant to the Kansas juvenile code for care of children to determine whether a child is a child in need of care. For a child whose custodian is the secretary of social and rehabilitation services, the term lawful custodian means the secretary except, when used in K.S.A. 72-972 through 72-975, and amendments to such sections, the term means an education advocate (K.S.A. 72-962(l)).
 - c. *Education advocate* means a person appointed by the state board [of Education] to act as lawful custodian in accordance with the provisions of K.S.A. 38-1513a and amendments thereto (K.S.A. 72-962(o)).
10. *Preschool age* means birth to school age for exceptional children (K.A.R. 91-12-22(bb)).
11. *Related services* means those services that are required to assist an exceptional child to benefit from special education. Related services include art therapy, audiology, counseling services, dance movement therapy, medical services for diagnostic or evaluation purposes, music therapy, occupational therapy, parent counseling and training, physical therapy, school psychological services, recreation, school health services, school social work services, special education administration and supervision, special music education, speech and language services, and transportation (K.A.R. 91-12-22(dd)). Related services shall be provided in accordance with standards set by the State Board of Education.
12. *School age* means:
 - (1) for gifted children, having attained the age at which the local board of education provides educational services for non-exceptional children, to and including the school year in which the gifted child completes a local curriculum or reaches age 21, whichever occurs first;

- (2) *for handicapped children, until June 30, 1991, having attained the age at which the local board of education provides educational services for non-exceptional children, to and including the school year in which the handicapped child completes a local curriculum or reaches age 21, whichever occurs first; and* (This means that schools are required to provide special education and related services for a handicapped student through the school year in which the student reaches the age of twenty-one. A student who reaches age twenty-one on or after July 1 must be provided services in that school year which is the same as the State fiscal year of July 1 through June 30 (K.S.A. 72-9001)).
- (3) *for handicapped children, on and after July 1, 1991, having attained age 3 on or before September 1 of the current school year, to and including the school year in which the handicapped child completes a local curriculum or reaches age 21, whichever occurs first* (K.A.R. 91-12-22(gg)). A free, appropriate public education shall be provided for all handicapped children aged 3 through 21.
13. *School district of residence* means the unified school district in which the child lives if:
- the child lives with a resident of the district and the resident is the parent, or a person acting as parent, of the child; or
 - the child lives in the district as a result of placement therein by a district court or by the Secretary of Social and Rehabilitation Services.
14. *School year* means the twelve-month period ending June 30.
15. *Special education services* means programs for which specially trained personnel, specially designed instruction, programming techniques, facilities and equipment may be needed for the education of exceptional children (K.S.A. 72-962(h)). Such services include physical education (regular or adapted) and vocational education.
16. *Special purpose school* means any school for exceptional children which is operated by a private, nonprofit corporation or a public or private institution within or outside of the state of Kansas which is:
- accredited by KSDE under the provisions of S.B.R. 91-33-1 *et seq.*, or
 - accredited or approved by the state in which it is located, subject to approval by the Special Education Administration Section, Kansas State Department of Education.
17. *State institution* means *Topeka state hospital, Osawatomie state hospital, Rainbow mental health facility, Larned state hospital, Parsons state hospital and training center, Norton state hospital, Winfield state hospital and training center, Kansas neurological institute and any youth center as defined by K.S.A. 1984 Supp. 38-1602* (K.S.A. 72-962(a)). The State Department of Social and Rehabilitation Services is responsible for the operation of State institutions.
18. *State school* means Kansas State School for the Deaf and Kansas State School for the Visually Impaired. The State Board of Education is responsible for the operation of State schools.
19. *Youth center school* means a school that is operated at a state youth center to provide education services to youth admitted to the institution.

Policies

1. Criteria for State Approval. Special education service units may be organized categorically or across categories and may be delivered through numerous delivery models. State approval of any special education service unit is contingent upon:
 - (1) *The employment of personnel properly certificated and endorsed in their assigned categories of exceptionality and level of instruction;*
 - (2) *compliance with pupil-teacher ratios;*
 - (3) *the special education and related services identified in the individual education program of each student;*
 - (4) *facilities comparable to those provided non-exceptional children;*
 - (5) *compliance with identification, individualized education program, placement, and review procedures;*
 - (6) *appropriate licensed or certificated support personnel;*
 - (7) *other necessary related services; and*
 - (8) *an approvable delivery model or models (K.A.R. 91-12-23(a)).*
2. Eligible Ages. All exceptional children of school age in the state of Kansas shall have available a free, appropriate public education. All special education and related services provided by school districts, cooperatives, interlocal entities, special purpose schools, State institutions, State schools, and State correctional facilities shall meet criteria set by the State Board of Education and shall be monitored by the Department of Education. Services for exceptional children of preschool age are authorized, but not mandated. Nothing in Kansas Administrative Regulations shall be construed to prevent the use of local funds or State special education categorical funds for preschool children.

If an LEA provides education to three- and four-year-old nonhandicapped children, a proportionate number of handicapped children in the same age groups shall have a free, appropriate public education made available to them. This Federal requirement applies until July 1, 1991, at which time special education services for all three- and four-year-old handicapped children are mandated.

34 CFR 300.121

34 CFR 300.300

34 CFR 300.300(b)(2)

K.S.A. 72-933 and 72-966

K.S.A. 72-970

K.A.R. 91-12-73(d)

3. Eligible Conditions. Appropriate educational opportunities which will contribute to the development of each exceptional child in the state shall be provided in accordance with his or her abilities and capacities regardless of the nature or severity of the student's exceptionality.

34 CFR 104.33(a) and (b)

34 CFR 300.123

K.S.A. 72-961

4. Related Services. All related services required to assist a student to benefit from special education shall be provided at no cost to parents. Medical services, except those required for

diagnosis or evaluation necessary for educational planning and programming, are not a related service.

34 CFR 104.33(b)
34 CFR 300.13

K.A.R. 91-12-22(dd)
K.A.R. 91-12-23(a)(7)
K.A.R. 91-12-60(b)

5. State Institutions. The provision of special education and related services shall be the responsibility of each student's school district of residence, unless the student meets the criteria for admission to a State institution and is, in fact, admitted by a State institution. All exceptional children *housed and maintained in* a State institution shall be provided special education and related services by that State institution. State institutions may contract with local school districts for special education services.

When the Secretary of Social and Rehabilitation Services or a district court places a student in a residential setting other than a State institution, the education of the student shall be the responsibility of the student's school district of residence.

K.S.A. 72-970
K.S.A. 72-976
K.S.A. 72-1046

6. State Schools. Admission standards for the State schools are determined by the State Board of Education and procedures for placement are set forth in K.A.R. 91-12-30(b). Education program costs associated with the placement of a student enrolled in a State school in a local school district are the responsibility of the State school and shall not be charged to the receiving school, the student, or his/her parents.

K.S.A. 76-1001b
K.S.A. 76-1101b
K.A.R. 91-12-30(b)

K.S.A. 76-1006
K.S.A. 76-1102

7. Residential Schools. If it is necessary for a school district to place a handicapped student in a residential school (either public or private) to provide a free, appropriate public education, the education program, including nonmedical care, board, and room shall be provided at no cost to the parents.

34 CFR 104.33(c)

K.A.R. 91-12-37(c)

Procedures for Implementation

1. State Education Agency Responsibility for All Special Education Programs. The provision of special education programs for each exceptional child is the responsibility of that child's school district of residence (K.S.A. 72-933 and 72-966) unless and until a child meets the criteria for admission to a State institution and is, in fact, admitted by a State institution (K.S.A. 72-976). State institutions are required to provide special education services for all resident exceptional children. All special education services must meet standards and criteria set by the State Board of Education and are subject to approval by the State Board (K.S.A. 72-970).

The State Board of Education also is responsible for establishing standards for the implementation of special education services in private schools and institutions and for supervising these services. Article 33 of the State Board Regulations specifies compliance

with State statutes, State regulations, and the Kansas State Plan for Special Education as a condition of accreditation for private schools or institutions for exceptional children.

2. Special Education Regulations, Policies, and Guidelines. K.S.A. 72-963 authorizes the State Board of Education to *adopt rules and regulations for the administration of the special education for exceptional children act* and to *adopt rules and regulations necessary to implement and give effect to the state plan*. The Special Education for Exceptional Children Act's effectuating regulations (Article 12 of Kansas Administrative Regulations) set forth the procedures which must be followed by all public agencies providing special education for exceptional children. The State Plan for Special Education and supplements to the State plan provide guidelines for implementation of State special education laws. The State plan is required to include the following:
 - (a) *Provisions for the establishment, maintenance and supervision of special education services in school districts and state institutions.*
 - (b) *Prescribed courses of study and curricula necessary to meet requirements for approval of special education services.*
 - (c) *Criteria for screening, diagnosis and certification of exceptional children including physical, educational and psychological examinations. . .*
 - (d) *Definitions of the various categories of exceptionality.*
 - (e) *Implementation date of special education services for the various categories of exceptionality.*
 - (f) *Standards for special education services to be received by each of the several categories of exceptional children (K.S.A. 72-963).*
3. KSDE Administrative Structure for Special Education. The State Board of Education has the major responsibility for the administration of the State Plan for Special Education and the general supervision of local education agencies. The Commissioner of Education is appointed by the State Board and serves as the Board's administrative officer. Under the policies and procedures adopted by the State Board of Education, the Commissioner directs the work of all persons employed in the Kansas State Department of Education.

The Assistant Commissioner of Education Services is responsible to the Commissioner of Education and the State Board of Education. The Assistant Commissioner administers policies approved by the State Board of Education for the organization and operation of instructional programs including the Special Education Administration Section.

The director of the Special Education Administration Section is the chief administrator of special education and is responsible through the Assistant Commissioner of Education Services to the Commissioner in regard to related policies and procedures approved by the State Board of Education.

4. Responsibilities of the Special Education Administration Section. Through authority delegated by the State Board of Education, the Special Education Administration Section is responsible for developing and recommending standards for the implementation and maintenance of special education services and for supervising and monitoring these services in school districts, private facilities, State schools, and State institutions. The mission of the Special Education Administration Section is to provide leadership at the State and local levels

in implementing full and appropriate educational services to all exceptional children. No direct services to handicapped children are provided by the KSDE.

5. LEA Options for Providing Special Education in the Public Schools. The Special Education for Exceptional Children Act requires each local board of education to provide special education services to all exceptional (handicapped and gifted) children *in the school district and said special education services shall meet standards and criteria set by the state board* (K.S.A. 72-966). In order to comply with this requirement and receive program approval, each local board of education has the authority, under K.S.A. 72-967, to do the following:
 - a. establish and organize special education services for exceptional children within its schools;
 - b. provide for special education services in the home, hospital, or other facility;
 - c. enter into cooperative agreements with one or more other school districts for special education services;
 - d. contract with another school district for special education services;
 - e. contract with an accredited, private, nonprofit corporation or public or private institution within or without the state.
6. Approval of Contracts for Special Education Services. *Proposed contracts for special education services, including proposed contracts with special purpose schools, shall be approved by the commissioner of education before the contracts are entered into. Three copies of each proposed contract shall be filed with the commissioner of education for review* (K.A.R. 91-12-36(b)). Local districts will be notified of the Commissioner's action. Services cannot legally be carried out or paid for without an approved contract. Reimbursement cannot be authorized or generated by an LEA prior to the approval of both contracting parties and the Commissioner of Education. Special education services and special purpose school contracts must be approved by the local parties and signed by the president of the board and the representative of the special purpose school. A designated board member may sign for the president, but the superintendent or director of special education may not sign as a designee of the board.

LEAs may contract only for special education services which have been approved and authorized by the State Board. KSDE will approve an out-of-state school or institution that is approved or accredited to provide special education services by the state in which it is located.

Prior to entering into a contract, a public or private institution shall submit to the Commissioner of Education a copy of the contract which contains:

- (1) *The names of the contracting parties;*
- (2) *the authority pursuant to which the contract is entered into, either K.S.A. 72-967 (which authorizes school districts to contract) or K.S.A. 72-970 (which authorizes State institutions to contract);*
- (3) *a detailed statement of the special education services or the curriculum to be provided;*
- (4) *the name of the child or children to be served;*

- (5) *the related services to be provided;*
- (6) *a provision limiting the term of the contract to the state fiscal year in which the services are to be provided;*
- (7) *the cost of the services;*
- (8) *a provision for termination of the contract for non-performance or lack of funding;*
- (9) *the means by which the sending agency will implement individual education program procedures and monitor pupil progress;*
- (10) *if the contract is between two school districts, agreement that the sending district will count the child for state and other financial reimbursement; and*
- (11) *if the contract is between a state institution and a school district, a provision specifying the federal education of the handicapped support program, P.L. 94-142 or P.L. 89-313, under which the child will be counted for state or local financial entitlements (K.A.R. 91-12-36(c)).*

7. Cooperative Agreements. Districts may comply with the mandate to provide special education services by entering into cooperative agreements with other school districts. Two types of cooperative agreements are permitted by Kansas law: special education cooperative agreements under K.S.A. 72-968 and interlocal agreements under K.S.A. 12-2904 and 72-8230. In a special education cooperative, the boards of two or more districts enter into an agreement to provide special education on a shared-cost basis. One district is designated as the sponsoring district and is responsible for providing the special education services specified in the agreement.

Each entity established under an interlocal agreement must be governed by a board of directors. The board of directors is composed of at least one member from the board of education of each participating district. An interlocal board may perform any of the services, duties, functions, activities, obligations, or responsibilities which are authorized or required by law to be performed by a local board of education, excluding the power to levy taxes.

8. Approval of Cooperative Agreements. Each special education cooperative agreement or interlocal agreement must be submitted to the State Board of Education at least forty-five days prior to the proposed effective date of the agreement. Each interlocal agreement must also be submitted for approval to the Office of the Attorney General. Applications will be approved if they meet statutory requirements, include a designation of the special education services to be provided, and are in proper legal and grammatical form.
9. Termination of Cooperative Agreements. Both special education cooperative agreements and special education interlocal agreements are perpetual under K.S.A. 72-968 and 72-8230, respectively, until terminated in the manner specified in these statutes. Partial termination may occur only upon:
- a. petition by a contracting district to other contracting district(s); and
 - b. approval by the State Board after written consent has been obtained from the contracting school district(s) or a hearing has been held and the State Board determines the partial termination should be allowed.

Complete termination of an agreement may occur only upon approval by the State Board of a petition for termination of the agreement signed by all of the contracting school districts. Each contracting school district must adopt a resolution to terminate the agreement prior to the petition being submitted to the State Board.

10. State Education Agency Responsibility for Exceptional Children Placed in Private Schools and Institutions. The State Department of Education has promulgated regulations and established procedures to ensure that each exceptional child who is placed by a public agency in a private school is provided special education and related services which:

- a. meet State Board standards;
- b. are delivered in conformance with the child's individualized education program; and
- c. are provided at no cost to parents.

Local education agencies may not contract for special education services for an exceptional child with a private school or institution that is not accredited or approved as a special purpose school or developmental special preschool by the State Board of Education.

11. Accreditation of Kansas Special Purpose Schools. S.B.R. 91-33-1 *et seq.* details the procedures for accrediting special purpose schools within the state. Each school, in order to be designated as a special purpose school, must submit annually a comprehensive plan of operation which meets the provisions of the Special Education for Exceptional Children Act, Article 12 of Kansas Administrative Regulations, as well as the standards of the State Board of Education as set forth in the Kansas State Plan for Special Education.

Representatives from public and nonpublic schools participated in the development of both the regulations governing special purpose schools. These regulations and the Kansas State Plan for Special Education are routinely furnished to any school seeking accreditation. Suggestions for the improvement of both documents are considered annually by the State Board of Education. Notification of a thirty-day period giving opportunity for public comment and a public hearing must be given prior to any State Board action which would substantially revise these documents.

KSDE procedures for accrediting special purpose schools ensure that exceptional children enrolled in such schools will have all the rights they would have if educated in a public school. Application for accreditation must be made annually. The application must demonstrate that the school is operated in compliance with State statutes, regulations, and standards. The accreditation status for each school is determined by evaluation of the data provided by the school in official reports, reports from State Department of Education staff, and reports from other agencies, such as the State Department of Health and Environment and the State Fire Marshal. Each school is monitored routinely by State Department of Education staff as part of the accreditation process.

Out-of-state schools must be accredited or approved to provide special education services by the state in which they are located. The curriculum must meet criteria set by the Special Education Administration Section and approved by the State Board of Education. Such approval must be obtained each year.

12. Approval of Developmental Special Preschools. Procedures for the approval of developmental special preschools are prescribed in K.A.R. 91-12-27 as follows:

- (a) *Requests for approval as a developmental special preschool shall be submitted to the special education administration section.*
- (b) *To be approved, a developmental special preschool shall:*
 - (1) *Meet the general criteria for state approval and the standards for early childhood handicapped services; and*
 - (2) *be licensed by the Kansas state department of health and environment as a child care center.*
- (c) *Each developmental special preschool shall obtain Kansas state department of education approval before applying for federal education funds or entering into contracts or agreements with local education agencies.*

Initial requests for accreditation as a special purpose school, as well as subsequent organizational reports and self-study reviews, are submitted to the Kansas State Department of Education. On-site visits are made to determine eligibility for accreditation. Accreditation criteria are set forth in State Board Regulations, Article 33. Included in those regulations is the following requirement: *The special education services provided by any special purpose school shall meet the requirements of Kansas statutes K.S.A. 72-962...and rules, and regulations adopted by the state board (S.B.R. 91-33-b(a)).*

KSDE approval may be given to special purpose schools accredited by another agency of the state of Kansas or by the state in which the private school or institution is located. If the accrediting or approving agency is outside of the Kansas State Department of Education, the school or institution also is subject to approval by the Special Education Administration Section. The curriculum must meet criteria approved by the State Board of Education. Approval must be obtained each year.

When it is determined (as a result of the individualized education program conference or due process proceedings) that placement in an accredited, private school is necessary to provide appropriate special education and related services for a handicapped child, the child's district of residence is responsible for making these services available at no cost to the parents through a contractual arrangement. If placement in a private, residential program is necessary, the cost of the child's room and board and other nonmedical care must also be provided at no cost to the parents.

If a local education agency, through a contractual agreement, refers or places a child in a private, special purpose school, the local education agency is responsible for conducting an individualized education program conference and must arrange for a representative of the receiving agency to participate. *If a representative of the receiving agency cannot attend the meeting, the sending agency shall ensure participation by the receiving agency through other methods, including individual or conference telephone calls. The sending agency, however, shall ensure its involvement, as well as that of the child's parents, in any decision about that child's individualized education program. Both the child's parents and the sending local education agency shall agree to any proposed changes in the IEP before those changes are implemented (K.A.R. 91-12-41(h)).*

III

SCREENING AND EVALUATION

Definitions

1. *Assessment* means the process of collecting information (data) for the purpose of making decisions about a student.
2. *Comprehensive evaluation* means the process of collecting information about an individual student to:
 - a. provide sufficient information to identify the student's individual educational needs and provide a basis for appropriate intervention;
 - b. determine whether that student is an exceptional child in accordance with eligibility criteria set by the State Board; and
 - c. determine whether special education services are needed for the student to benefit from the educational program.
3. *Document* means to furnish written evidence of actions taken.
4. *Motor ability* means abilities and components of abilities which support motor performance including:
 - a. neuromuscular control, e.g., reflexes, range of motion, muscle tone, strength, endurance, postural control, and soft tissue integrity;
 - b. sensory processing;
 - c. perceptual skills; and
 - d. specific motor abilities, e.g., activity tolerance, gross motor coordination, bilateral integration, praxis, fine motor and visual-motor coordination, and oral motor control.
5. *Preassessment* means the process of determining whether the educational needs of a student can be met by the regular education program through instructional modifications and documentation of the result. The preassessment team provides support and assistance to regular education teachers so that they may deal effectively with students who exhibit learning and/or behavioral differences.
6. *Preassessment team* means a group of regular education and special services professionals who meet to assist a regular education teacher assess a student's learning and behavior problems, initiate modifications in materials, curriculum, or technique, and evaluate the results of these modifications. The team may be formed on demand and maintained as long as needed, or formed as an ongoing instructional assistance committee. The membership of the team may vary, but should be comprised mainly of regular education personnel.
7. *Reevaluation* means any comprehensive evaluation conducted after the preplacement evaluation. The purpose of a reevaluation is to:

- a. assess the student's current educational needs;
 - b. determine the appropriateness of that student's special education program, i.e., determine whether the student is making satisfactory educational progress in his/her current placement; and
 - c. make recommendations for updating or revising the student's IEP.
8. *Screening* means procedures which consider all children in a given population in order to locate those who may require preassessment or referral for a comprehensive evaluation.
- a. *developmental screening* means screening procedures which assess health, vision, hearing, social and emotional status, general intelligence, educational performance, communicative skills, and motor abilities.
 - b. *initial screening* means screening procedures which are applied to all children entering the educational system for the first time. This entry may be at the preschool, elementary, or secondary level.
 - c. *systematic and ongoing screening* means screening procedures which are scheduled and conducted on a regular basis for all students in all levels of an LEAs educational program. Students who fail to meet screening criteria will typically be referred to the preassessment team.
9. *Test* means a systematic procedure for observing a student's behavior and describing it by means of a numerical scale or a category system.

Policies

1. Purpose of Screening. Screening is not a special education action and may not be used as the sole basis for special education placement or programming. Prior written parental consent is not required because children are not "singled out" to participate in screening activities. In the screening process the same techniques and instruments are used with large groups of children or, in the case of initial screening, with individual children.

K.A.R. 91-12-40(a)

2. Preschool and Out-of-School Screening. Each local education agency shall implement developmental screening procedures, at least annually, to identify all children and youth ages birth through 21 within its jurisdiction who are not enrolled in any education program and who may be eligible for special education and related services. These procedures shall use age-appropriate instruments, measures, and techniques.

Each LEA is responsible for publicizing screening activities for children and youth who are not receiving education services and who may need, but are not receiving special education and related services. Mass screening need not be undertaken if a local education agency conducts appropriate public awareness activities and actively recruits the participation of parents and service provider who suspect that a child may have a handicapping condition.

K.A.R. 91-12-40(a)(b)

3. School-Age Screening. Each local education agency shall implement systematic and ongoing screening procedures which locate children and youth who are enrolled in the LEAs education program and who may require special education and related services. The

procedures used by an LEA shall be described in the LEAs local comprehensive plan and shall include:

a. hearing screening which, as required by K.S.A. 72-1204, is:

- (1) conducted with a calibrated audiometer by a person registered with the Special Education Administration Section as competent to conduct hearing screening; and
- (2) provided without charge to parents during the first year of admission and not less than once every three years thereafter.

The results of the hearing screening whether positive or negative and, if necessary, the need for further examination by a qualified physician shall be reported to the parents.

b. vision screening which, as required by K.S.A. 72-5205, *et seq.*, is:

- (1) conducted by a person designated by the local board of education using a test chart which is graduated as to the size of the symbols or any other system or method judged effective by the board; and
- (2) provided without charge to parents not less than once every two years;

The results of the vision screening whether positive or negative and, if necessary, the need for further examination by a qualified physician or audiologist shall be reported to the parents.

- c. the age-appropriate assessment procedures used by the LEA at the various levels of their educational program to screen for possible special education needs;
- d. screening criteria, i.e., acceptable performance levels that are consistent in all buildings within the local education agency; and
- e. how screening data are used.

K.A.R. 91-12-40(a)

4. Private School Students. An LEA must provide to students enrolled in a private school, on an equal basis and upon request of the student's parent, the same programs for exceptional children that it provides for public school students in its jurisdiction. This includes the provision of screening and evaluation services. K.S.A. 72-1205 specifically requires that every student enrolled in an accredited, nonpublic school shall be provided hearing screening services either:

- a. by the accredited, nonpublic school; or
- b. upon the request of the student's parent, by the school district in which the student resides.

K.S.A. 72-5393

5. Preassessment. No student enrolled in regular education shall be identified as exceptional until a preassessment team has:

- a. documented that the student has been presented with learning experiences which are appropriate for the student's age and ability levels;
- b. documented that the above intervention(s) have not been successful in helping the student achieve his/her potential for learning in that regular education environment; and
- c. completed a record of the dates the preassessment team met, the names and positions of preassessment team members, and the team recommendations.

Preassessment is not a special education action. The purpose of preassessment is not to identify a student as exceptional nor to determine which special education program might meet a student's needs. It is conducted prior to referral for a comprehensive evaluation. While parents should be advised of preassessment activities, parental consent is not required prior to convening the preassessment team and implementing interventions recommended by the team.

Exception: Preassessment is not required for students who have been identified through screening or referral as having an articulation or voice or fluency deficiency as their only disability. All students identified as having a voice or fluency impairment shall be referred for a comprehensive evaluation by a multidisciplinary team (see policy statement 14 on page 20). Preassessment is, however, required for all students identified during screening or referral as having a language deficiency. If, after evaluation, the student is found to have a language deficiency with a severity rating of three or four, the speech clinician shall refer the student to a multidisciplinary team for further evaluation.

K.A.R. 91-12-40(c)

6. Due Process Rights. The comprehensive evaluation is a special education action. Whether or not preassessment has occurred, when parents feel that their child needs special education services, the LEA must agree to conduct a comprehensive evaluation or conduct a due process hearing to determine if the evaluation is necessary.

34 CFR 300.506

K.A.R. 91-12-22(oo)(2)(A)

K.A.R. 91-12-45(b)

7. Nondiscriminatory Assessment. Tests and procedures used as part of a comprehensive evaluation must be selected and administered so as not to be racially or culturally discriminatory.

The decision to place or refuse to place a student in any special education program shall not be based on the student's inability to communicate in English. No student from a home in which English is not the principal language, may be identified as exceptional and placed in any special education program until a comprehensive evaluation has been conducted in the language best understood by the student. Tests and other evaluation materials shall be provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.

34 CFR 300.530

K.S.A. 72-963

34 CFR 300.532(a)(1)

8. Scope of the Comprehensive Evaluation. The comprehensive evaluation shall assess all areas relevant to the reasons given for referral including, where appropriate, health, vision,

hearing, social and emotional status, general intelligence, educational performance, communicative status, motor abilities, and vocational skills.

K.A.R. 91-12-40(d)(2)

K.A.R. 91-12-40(d)(7)

9. Assessment of Students with Sensory, Motor, or Communication Impairments. If any student has a sensory, motor, or speaking impairment, tests and other evaluation materials shall accurately assess whatever factor(s) they purport to measure rather than reflect that student's impaired sensory, motor, or speaking skills, except where those skills are the factors being measured.

34 CFR 300.532(c)

K.A.R. 91-12-40(d)(1)(B)

34 CFR 300.532(f)

10. Evaluation Team. The comprehensive evaluation shall be conducted by a multidisciplinary team, including at least one member who is knowledgeable in the area of suspected disability and at least one member who is qualified to conduct individual diagnostic examination of children and youth. When the suspected disability is learning disabilities, the team shall include:

- a. the student's regular teacher; or
- b. if the student does not have a regular teacher, a regular teacher qualified to teach a student of his/her age.

Any test used as part of the comprehensive evaluation shall be administered by a professional holding current certification or licensure to administer and interpret that test. Psychological tests shall be administered only by a school psychologist holding current certification by the State Board of Education or by a psychologist licensed by the Kansas Behavioral Sciences Regulatory Board, who has experience or training in conducting public school evaluations and who is reported to the Kansas State Department of Education.

34 CFR 300.532(a)(3)

K.A.R. 91-12-40(d)(5)

34 CFR 300.532(e)

K.A.R. 91-12-54

34 CFR 300.540

11. Administration of Evaluation Materials. Any test or other evaluation material shall be administered in conformance with the instructions provided by the producer and shall have been validated for the specific purpose for which they are used as a part of the comprehensive evaluation.

34 CFR 300.532(a)(2)

K.A.R. 91-12-40(d)(4)

12. Multisourced Evaluation. No student shall be placed or maintained in special education on the basis of a single test or evaluation procedure. Information must be obtained from multiple sources such as interviews or reports from parents and professionals, observations of the student in various settings, formal and informal tests, curriculum based procedures, documentation of social relationships and behavior patterns, and documentation of work habits. Placement recommendations shall not rely solely on tests and other evaluation materials that are designed to provide a single general intelligence quotient.

34 CFR 300.532(b)

K.A.R. 91-12-40(d)(1)(B)(2)

34 CFR 300.532(d)

13. Exception to Multidisciplinary Team Requirement. Students who have an articulation impairment, voice deviation, or a fluency deviation may not need a comprehensive evaluation by a multidisciplinary team. The evaluation may be considered complete after the speech and language clinician has:
- assessed the student by using procedures that are designed for the diagnosis and appraisal of speech and language disorders;
 - documented that the student has no learning or behavior problems. This verification may be accomplished by examination of the student's educational records and conferences with the student's teacher(s) and parents; and
 - formulated recommendations regarding the extent and nature of speech services needed by the student.

If the speech/language assessment identifies language deficiencies with a severity rating of three or four, or learning or behavior problems, the clinician shall make a referral for a comprehensive evaluation by a multidisciplinary team.

34 CFR 300.532 (Comment)

K.A.R. 91-12-40(d)(6)

14. Meeting to Determine Eligibility and Special Service Needs. When all relevant information about the student has been obtained, the evaluation team shall meet to determine whether the evaluation results indicate that the student meets eligibility criteria as an exceptional student and needs special education in order to benefit from his/her education. If both of these determinations are made, the team also shall determine whether the evaluation data is sufficient to develop an individualized education program or whether additional information is needed. If special education placement is recommended, the team shall provide the IEP team with evaluation results and recommendations for instructional goals and objectives. If special education placement is not recommended, the evaluation results should be made available to the student's teacher and parents.

K.A.R. 91-12-40(d)(7)

15. Time Line for Completion of Evaluation. Each comprehensive evaluation shall be completed within forty school days from the time of referral. The evaluation shall be considered complete when the team, as a group, formulates recommendations regarding the student's special education needs. The LEA shall not be held in noncompliance with the forty school-day requirement if circumstances beyond its control prevent the completion of the evaluation.

K.A.R. 91-12-40(d)(8)

16. Autistic. Criteria for identifying a student as autistic include:
- onset of autistic characteristics before thirty months of age;
 - pervasive lack of responsiveness to other people and to the environment;
 - gross deficits in speech and language development; and
 - absence of delusions, hallucinations, loosening of associations, and incoherence as are typical in schizophrenia.

Note: A student may be identified as autistic even though he/she is not currently exhibiting all the characteristics of autism if the student once exhibited all the characteristics of autism and currently is unable to benefit from education without special education and related services.

K.A.R. 91-12-56(b)

17. **Behavior Disordered.** Criteria for identifying students as behavior disordered (B.D.) shall include:

- a. administration of a behavior rating scale designed to identify B.D. students.
- b. classroom observation of educational performance by an evaluation team member, other than the student's regular classroom teacher, who is trained to use observation as a diagnostic procedure. For preschool or out-of-school students, the observation shall be made in an age-appropriate setting;
- c. determining whether a mental health consultation is needed and provision of this consultation if necessary; and
- d. evaluation data showing that the student has one or more behavioral characteristics that are:
 - (1) exhibited at either a much higher or much lower rate than is appropriate for his/her age;
 - (2) documented as occurring over an extended period of time in different environmental settings within the school, and home or community; and
 - (3) interfering consistently with the student's educational performance. This interference with educational performance shall not be a result of intellectual, sensory, cultural, or health factors that have not received appropriate attention.

K.A.R. 91-12-22(c)(3)

K.A.R. 91-12-55(a)(3)

18. **Deaf-Blind.** Criteria for identifying a student as deaf-blind shall include:

- a. additional specialized tests by medical personnel, as necessary for educational planning;
- b. documentation that one dominant impairment (e.g., cerebral palsy, deafness, or blindness) does not prevent the assessment and identification of other impairments; and
- c. evaluation results that document a combination of auditory and visual impairments which cause such severe communication and other developmental and educational problems that the student cannot be accommodated in special education programs solely for the hearing impaired or the visually impaired.

K.A.R. 91-12-22(f)

K.A.R. 91-12-57(b)

19. **Developmentally Delayed.** Criteria for identifying a student as developmentally delayed shall include:

- a. the age the student is under six; and
- b. the student has one or more diagnosed conditions which cannot be medically corrected and are associated with educationally handicapping conditions (i.e., one of the areas of exceptionality); or
- c. the student tests 25 percent or more below chronological age on criterion or norm-referenced validated test instruments in one or more of the developmental areas.

Children classified as developmentally delayed must qualify as handicapped. This category is to be used for young children whose specific handicapping condition can not be accurately diagnosed.

K.A.R. 91-12-22(h)

20. Gifted. Criteria for identifying students as gifted shall include:

- a. teacher evaluation;
- b. analysis of student's accomplishments and products;
- c. a minimum composite rank of 97th percentile on national or local norms, whichever is higher, for a standardized individual intelligence test or evidence that the test doesn't reflect true potential; and
- d. for elementary students, composite rank of 95th percentile on a standardized achievement test or evidence that the test doesn't reflect the student's true potential; or
- e. for secondary students, a rank of not less than 95th percentile on national norms on two or more of the math, language arts, science, or social science sections, or evidence that the test doesn't reflect the student's true potential.

K.A.R. 91-12-52

21. Hearing Impaired. Criteria for identifying students as hearing impaired shall include assessment of auditory acuity and perception which establishes a loss of auditory functioning sufficiently severe as to affect ability to communicate with others or to develop communicative or learning skills.

K.A.R. 91-12-22(l)

K.A.R. 91-12-53(b)

22. Learning Disabled. Criteria for identifying students as learning disabled (L.D.) shall include:

- a. evaluation by a multidisciplinary team including either the student's teacher or a regular teacher qualified to teach a student of that age;
- b. if the intellectual functioning of a student is more than two standard deviations below the mean of the individual intelligence test administered, a written statement by the individual responsible for assessing intellectual functioning giving the specific data which support a supposition that the IQ measure is suspect and that the discrepancy between achievement and aptitude is not caused by mental retardation;

- c. observation of educational performance in the regular classroom by a team member (other than the student's regular class teacher) who is trained to use observation as a diagnostic procedure, or for preschool or out-of-school students, observation in an age-appropriate setting;
- d. documentation of a significant discrepancy between students' current achievement and aptitude according to the regression formula or the simple standard score differences as prescribed in the Kansas L.D. guidelines;
- e. in cases where significant discrepancy criteria are not met (override of the formula), a written statement by the team including:
 - (1) the assessment procedures used;
 - (2) assessment results;
 - (3) criteria used to judge the importance of any difference between expected and current achievement; and
 - (4) reasons for believing that a severe discrepancy exists that is not correctable without special education;
- f. a written report by the team which includes:
 - (1) a statement that the student has been presented with age/ability-appropriate learning experiences and has failed to learn;
 - (2) whether there is a significant discrepancy between aptitude and achievement;
 - (3) the determination of the team regarding effects of environmental, cultural, or economic disadvantage;
 - (4) relevant behavior noted during observation;
 - (5) the relationship of that behavior to academic functioning;
 - (6) any educationally relevant medical findings;
 - (7) whether the student has a learning disability that is not correctable without special education or related services;
 - (8) a written statement for each team member that the report reflects his/her conclusions;
 - (9) separate written statements of dissenting opinions, if any.

34 CFR 300.540-543

K.A.R. 91-12-58(a)

23. Mentally Retarded. Criteria for identifying students as mentally retarded shall:
- a. include an assessment of adaptive behavior;
 - b. include an assessment of intellectual functioning; and

- c. establish that the student exhibits deficit behavior in more than one setting and is at least two standard deviations below the mean of the individual test used to assess his/her general intelligence.

K.A.R. 91-12-22(x)

K.A.R. 91-12-54(a)

24. Physically or Other Health Impaired. Criteria for identifying a student as physically or other health impaired include:

- a. evaluations by qualified health providers to determine conclusively whether a physical or health impairment exists;
- b. a comprehensive evaluation to determine extent to which the impairment prevents or restricts meaningful and productive participation in regular education; and
- c. evaluation results which show that the student has a physical condition that interferes with participation in educational experiences and/or adversely affects educational performance.

K.A.R. 91-12-22(y)

K.A.R. 91-12-22(aa)

K.A.R. 91-12-56

25. Severely Multiply Handicapped. Criteria for identifying a student as severely multiply handicapped shall include:

- a. additional specialized tests by medical personnel, as necessary for educational planning;
- b. documentation that one dominant impairment (e.g., cerebral palsy, deafness, or blindness) does not prevent the assessment and identification of other impairments; and
- c. evaluation results documenting severe to profound functional retardation in conjunction with severe sensory disabilities, motor disabilities, severe emotional disturbance, chronic health conditions, or severe communication disorders.

K.A.R. 91-12-22(II)

K.A.R. 91-12-57(b)

26. Speech/Language Impaired. Criteria for identifying students as speech/language impaired shall:

- a. include assessment of articulation, language, fluency, voice, and auditory acuity, and perception; and
- b. establish that the communication deviation/impairment adversely affects educational performance.

K.A.R. 91-12-22(u)

K.A.R. 91-12-53(b)

27. Visually Impaired. Criteria for identifying a student as visually impaired shall include:

- a. information about recommended treatment or correction resulting from an examination by an eye specialist; and
- b. evidence that the student's limited vision interferes with educational and/or developmental progress.

K.A.R. 91-12-22(tt)

K.A.R. 91-12-59(a)

28. Comprehensive Reevaluation. A reevaluation shall be conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation. This reevaluation must meet the same requirements that have been specified for the comprehensive preplacement evaluation. As in the preplacement evaluation, the reevaluation must include assessment information in all areas relevant to the reason(s) that the student is thought to be exceptional and in need of special education. However, the procedures or methods used to assess a given developmental area may differ from those of any previous comprehensive evaluation. The areas assessed also may vary from those assessed in previous comprehensive evaluations. When changes in the student's behavior/performance or within his/her environment have occurred, the scope of the reevaluation must be adjusted accordingly.

Cognitive functioning shall be assessed in each reevaluation except when exempted by K.A.R. 91-12-40(d)(6) as detailed in policy statement 14 on page 20. This does not mean that a standardized individual intelligence test must be used in each reevaluation. Minimum standards for the frequency of individual intelligence testing are:

- a. for each student who has been identified as having a handicap and in need of special education, at least two individual intelligence tests shall be administered. Generally this testing will be conducted during the preplacement evaluation and one subsequent reevaluation. At least one of the individual intelligence tests must be given as a part of a reevaluation (usually one of the triennial reevaluations) conducted after the student's eighth birthday.
- b. for any student identified as gifted and in need of special education, an individual intelligence test is required in the preplacement evaluation. In subsequent reevaluations, an individual intelligence test is not required if:
 - (1) the preplacement evaluation was conducted after the student's eighth birthday; and
 - (2) the student's educational performance indicates that the results of the initial intelligence test were valid; and
- c. when a standardized individual intelligence test may be discriminatory (as in the case of students with limited English proficiency or with severe/profound/multiple handicaps) alternative methods of assessing cognitive functioning may be used.

After these minimum standards are met, the multidisciplinary team shall decide whether a formal test of intelligence or alternative measures of cognitive functioning will be used. Reasons for the decision shall be written and entered in the student's records.

34 CFR 300.534

K.A.R. 91-12-42(b)(4)

29. Notification of Reevaluation. Parental consent is not required for a reevaluation if:
- The child has been placed initially in accordance with the [all due process] requirements of K.A.R. 91-12-44 through 48;*
 - the program is current and has been reviewed or revised annually; and*
 - the child's parents have been given prior written notice of the proposed reevaluation (K.A.R. 91-12-45(b)(1)).*

34 CFR 300.504(b)(2)

30. Review. An informal follow-up shall be carried out annually for at least two years to monitor the progress of any exceptional student for whom special education services have been terminated and who has been returned to regular education.

K.A.R. 91-12-42(b)

Procedures

1. Public Awareness Activities. Public awareness is a key element in the screening process. Activities designed to enhance the understanding of the community at large, as well as school district personnel to the need of exceptional students must be conducted. Activities to disseminate information to the public might include radio, TV, and newspaper announcements, dissemination of flyers and brochures; and presentations by staff to local organizations. Records must be kept to document these public awareness efforts.
2. Interagency Coordination. LEAs should cooperate with other local agencies, both public and private, in screening efforts. Head Start, developmental disability centers, child care providers, public health, community mental health, Social and Rehabilitation Services, advocacy organizations, and institutions of higher education should be involved when feasible.
3. Role of Regular Education Staff. Training on the role of regular class teachers in screening and preassessment should be included in the LEAs inservice program.
4. Private Schools. The LEA should notify each private school within its jurisdiction, in writing, that developmental screening, including hearing screening will be conducted by the LEA upon the request of any student's parent.
5. Preassessment. Preassessment requirement does not apply to students who have been identified as exceptional, such as students who have attended an early childhood special education program or students returning from a State institution. Such children should be placed immediately on the basis of existing comprehensive evaluation results or, if these data are not current or complete, referred for a comprehensive evaluation.

For students enrolled in regular education, the preassessment requirement may be overridden only by parental request for a comprehensive evaluation. If a parent does request a comprehensive evaluation, the LEA should take the following steps:

- a. meet with the parent to be sure that the parent understands the purpose of a comprehensive evaluation, i.e., that it may result in a recommendation for special education placement. Before complying with a request for a comprehensive evaluation, the LEA should confirm that the parent believes special education may be necessary for

the child. Some parents may merely desire further assessment information that can be used to maintain the child in regular education.

- b. explain the purpose of preassessment activities and attempt to convince the parent of its value in providing information that will assist in personalizing instruction for the child.
 - c. if the parent continues to pursue the referral, determine whether to initiate or refuse to initiate the comprehensive evaluation. If the LEA refuses to take the action, the parent may request a due process hearing to decide the matter. If the parent neither requests a hearing nor withdraws the referral, after thirty days, the LEA must agree to the comprehensive evaluation or initiate the hearing. During this period, the LEA should continue with the preassessment inasmuch as the information collected can be used for maintaining the student in regular education, supplementing comprehensive evaluation procedures, or supporting the LEAs position in subsequent due process actions.
6. Nondiscriminatory Assessment. Each LEA is responsible for determining the primary language or mode of communication used in the home and the language best understood by any student who is being considered for special education services. Information about the mode of communication used in the home is necessary in order to communicate special education rights to the parents. Information about the language best understood by the student is necessary in order to conduct a nondiscriminatory comprehensive evaluation.

If a student is referred for a comprehensive evaluation and the student's preferred mode of communication is not English, the LEA may:

- a. use a qualified evaluator fluent both in the student's mode of communication and in English;
 - b. use an interpreter to assist the evaluator and the student;
 - c. select tests and other evaluation materials which do not rely heavily on spoken language.
7. Assessment of Students with Sensory, Motor, and Communication Disabilities. It is discriminatory to use the results of tests or subtests which are affected by the student's disability for the determination of placement in special education. For example, subtests of the WISC-R which require intact motor ability could not be used to assess the intellectual functioning of a student with cerebral palsy and impaired motor ability. These subtests could, however, provide information about the student's dexterity, range of motion, postural control, and speed of manipulation which is valuable for determining instructional needs.
8. Time Line for Completion of the Comprehensive Evaluation. Because oral and written referrals have the same legal status, LEAs should establish procedures for documenting the time period between oral and/or written referral for a comprehensive evaluation and completion of the evaluation. These procedures should:
- a. designate the person(s) who is authorized to accept referrals;
 - b. describe the steps that must be taken by the person making the referral; and
 - c. specify methods for documenting the date of referral.

These procedures should be communicated to both staff and parents. In the absence of clear local policies, LEAs may be held to the date the parents say they made a referral. The comprehensive evaluation is not considered to be complete until the student has been

assessed in all areas related to the reason(s) for referral and the student's evaluation team has met. The purpose of this meeting is to determine whether the student meets eligibility criteria as an exceptional child and is in need of special education services. Therefore, summaries of this meeting should be dated and filed.

Failure on the part of the LEA to meet the prescribed forty school day time line for the comprehensive evaluation will not be considered a noncompliant action if the circumstance preventing completion is beyond the control of the LEA. Reasons for extending the evaluation period must be carefully documented. Examples of circumstances that would excuse an LEA from completing the comprehensive evaluation in a timely fashion include:

- a. refusal by parents to give written consent to evaluate;
 - b. excessive school absences by the student during the duration of the evaluation; and
 - c. unavoidable delays in arranging for components of the evaluation for which the LEA has to contract services.
9. Purpose of the Comprehensive Evaluation. The intent of the comprehensive evaluation is to collect all of the information that is necessary to develop an instructional program for an exceptional child. The first step is to rule out conditions or factors that have no educational relevance for the child under consideration. Screening and preassessment data may be used for this purpose and should be specifically referenced in staffing summaries and the current level of performance of the IEP.
10. Comprehensive Reevaluation. The reevaluation team is responsible for determining the areas to be assessed and tested based upon a review of the student's performance in and out of school. Historical information such as reports from teachers or other personnel who have worked with the student since the last evaluation, the results of the annual IEP reviews, past parent input, and prior classification or placement information may assist in determining the student's progress and the effectiveness of the current programming.

The purpose of a reevaluation is:

- a. to review the progress a student has made since the last comprehensive evaluation (i.e., the effectiveness of the special education services that are being provided for the student);
- b. to assess his/her current educational needs; and
- c. to revise the student's IEP and make placement recommendation as necessary based on the results of the reevaluation.

Consideration should be given to the results of previous evaluations. Where any question exists about the reliability or stability of previous testing, or where a significant change in the student's functioning has occurred, an additional individual intelligence test may be needed.

In the year in which a triennial reevaluation is due, the annual IEP review and the reevaluation should be scheduled so the reevaluation results are available for consideration in updating the IEP. Although both the reevaluation and IEP must be completed on their "anniversary" date, there is no prohibition against conducting them at an earlier date.

Assessment of the current educational needs of the student will verify the necessity for continued special education services and identify the least restrictive environment for the student. If the multidisciplinary team recommends a change to a more restrictive placement,

written documentation of the reasons for the recommendation must be placed in the student's records. (See Chapter V, Least Restrictive Environment.)

IV

INDIVIDUALIZED EDUCATION PROGRAM

Introduction

The State education agency shall ensure that each public agency develops and implements an individualized education program for each of its handicapped children... including a student, who is placed in or referred to a private school or facility by a public agency or is enrolled in a parochial or other private school and receives special education or related services from a public agency (34 CFR 300.341). The individualized education program (IEP), as required by The Education of All Handicapped Children Act, is intended to provide a process for parents and school personnel to jointly make decisions about the educational program for a student who is handicapped (the IEP meeting) and to provide a written record of the special education program needed by the student (the IEP document). The IEP concept is applicable to students who are gifted as well as handicapped, therefore, all Kansas requirements governing the IEP use the term exceptional rather than handicapped.

The IEP process provides an opportunity for resolving any differences between the parents and the local education agency concerning an exceptional student's special education needs: first through the IEP meeting, and, if necessary, through the procedural safeguards that are available to the parents.

The IEP sets forth in writing a commitment of resources necessary to enable the exceptional student to receive needed special education and related services. The IEP is also a compliance monitoring document which is used to determine whether an exceptional student is actually receiving the free, appropriate public education program agreed to by the parents and the school.

Definitions

1. *Anticipated duration of services* means the period of time covered by the IEP which is not to exceed twelve months.
2. *Days* mean calendar days excluding the day of the event from which the designated period of time begins to run. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday; in which case, the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. A "legal holiday" is one so designated by the Congress of the United States or Kansas Legislature. In calculating the length of time for responding to a notice which is served by mail, three days shall be added to the prescribed period.

60-206 Rules of Civil Procedure

3. *Individualized education program* means a statement written annually which is jointly developed by the school and parent(s) and describes the unique special educational needs of the exceptional student as well as the services to be provided to meet these needs.

CFR 300.340

K.A.R. 91-12-22(q)

4. *IEP team* means the persons in attendance at the meeting(s) in which a student's individualized education program is developed, reviewed, or revised.

Policies

1. Time Lines for Initial IEP. An individualized education program (IEP) shall be developed for each student who meets criteria as exceptional (as defined in K.A.R. 91-12-22) and needs special education services. For any exceptional student who is not yet receiving special education, the IEP shall be developed no later than thirty days from the date when it is determined that the student is eligible for and requires special education. The student shall remain in his/her current placement until the IEP is completed and parental permission is obtained for the recommended placement or until due process proceedings, including appeals, are completed.

An IEP must be in effect before placement in a special education program and the provision of special education and/or related services. This means that prior to the initiation of services:

- a. an IEP has been developed in a meeting involving all of the required participants;
- b. the parents and the LEA have agreed that the IEP is appropriate (in terms of the specified goals and objectives and the services to be provided) and will be implemented as written.

34 CFR 300.342(b)(1)

K.A.R. 91-12-41(a) & (g)

34 CFR 300.342(b)(2)

34 CFR 300.343

2. Annual Review. A meeting shall be conducted for the purpose of reviewing and, if appropriate, revising the IEP for each exceptional student at least once a year and more frequently, if needed. A notation of the date of review shall be recorded on the IEP. Except for initial IEPs, all IEPs shall be implemented immediately unless the IEP meeting was held during a vacation period or documented extenuating circumstances require a short delay.

34 CFR 300.343(d)

K.A.R. 91-12-42(b)(3)

3. Participants in IEP Meetings. The participants in the IEP meeting(s) shall include:
 - a. a representative or representatives of the LEA, other than the student's teacher or teachers, who is qualified to provide, or supervise the provision of, special education services.
 - b. the student's teacher or teachers;
 - (1) For any student who is receiving special education, the teacher shall be the special education teacher with primary responsibility for implementing the student's IEP. If the student's primary handicap is a speech or language impairment, the teacher shall be the speech or language clinician.
 - (2) For an exceptional student who is being considered for placement in special education, the teacher shall be the student's regular classroom teacher or a teacher qualified to provide education in the suspected area of exceptionality.
 - (3) If the student is not in school or has more than one teacher, the LEA shall designate which teacher(s) will participate in the meeting.
 - c. one or both of the student's parents;

Note: In the event of a separation or divorce and unless there is a termination of parental rights or a court document which indicates otherwise, the LEA should assume that both parents (the residential/custodial parent and the nonresidential/noncustodial) have the right to participate. If there is a question about parental rights, the district may request a copy of the divorce decree.

- d. the student, if at the age of majority or if the parent chooses to have the student participate;
- e. for an exceptional student who is being evaluated for the first time, a member of the evaluation team or someone who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation;
- f. other individuals who, in the opinion of the parents or the LEA, are necessary to complete the IEP.

34 CFR 300.344

K.A.R. 91-12-41(b)

- 4. Notification of IEP Meeting. Parents shall be notified at least ten days before the IEP meeting in order to ensure that they will have the opportunity to participate in developing the IEP. The meeting may be convened in fewer than ten days if the parents agree to an earlier meeting.
 - a. The notice shall indicate the date, time, location, and purpose of the meeting and the number and role of school personnel who will be in attendance.
 - b. A reasonable attempt shall be made to schedule the meeting at a mutually agreed-upon time and place.

34 CFR 300.345

K.A.R. 91-12-41(c)

- 5. Parental Participation. The LEA shall take whatever action is necessary to ensure that the parent may fully participate in the proceedings at the IEP meeting. Provision for interpreters or other facilitators shall be made for parents who are sensory impaired or whose principal language is other than English. If any LEA is unable to obtain parental participation, the IEP meeting may be conducted without this participation. In such cases, the local education agency shall document the attempts made to arrange a mutually agreed-upon time and place for the meeting.

34 CFR 300.345(d)

K.A.R. 91-12-41(c)

34 CFR 300.345(e)

K.A.R. 91-12-41(d)

- 6. Copy to Parent. A copy of the IEP shall be provided to the parent.

34 CFR 300.345(f)

- 7. Content of the IEP. Each IEP shall include the following:

- a. a statement of the student's present level of educational performance written in a manner which summarizes the evaluation data. These statements must provide sufficient information to develop goals and objectives for special education and/or related services. The statement shall include, as appropriate, health, vision, hearing, social and emotional status, general intelligence, educational performance, communicative status, motor abilities, and vocational skills;

- b. a statement of annual goals which describes the educational performance anticipated within a year's time and which have a direct relationship with student needs as described in the present levels of educational performance;
- c. a statement of short-term objectives which are measurable, intermediate steps between the present level of performance and each of the annual goals;
- d. objective criteria, evaluation procedures, and schedules for determining, at least every twelve weeks, whether the short-term objectives are being achieved;
- e. a statement of the specific special education services, related services, and unique instructional media needed by the student, as determined by the IEP team based on the student's current evaluation, even if not all of these services are directly available in the LEA and must be provided through contract or other arrangements;
- f. the amount of time the student will participate in regular classroom programs and other academic and nonacademic environments with nonexceptional students; and
- g. the projected date for the initiation of the prescribed services and anticipated duration of the services including a statement of any extended school-term services to be provided.

34 CFR 300.346

K.A.R. 91-12-41(f)

- 8. Students in Private Schools or Served through Contracted Services. For any exceptional student who is enrolled in a parochial or other private school and who receives special education from an LEA, or for any exceptional student who is referred to or placed by an LEA in another accredited or approved special education program through a contractual arrangement, the LEA shall be responsible for:
 - a. initiating and conducting conferences to develop the IEP for the student; and
 - b. ensuring that the parents of the student and a representative of the receiving agency participate in each initial IEP conference. If the parents or representative cannot attend the IEP conference, other methods to ensure participation shall be used, such as individual or conference phone calls or written communication.

At the discretion of the LEA, any meetings to review and revise the IEP may be initiated and conducted by the private school. Both the sending agency and the parents shall agree to any proposed changes in the IEP before those changes are implemented. Even if a private school implements a student's IEP, responsibility for compliance with State and Federal requirements remains with the KSDE and the LEA responsible for providing special education and related services for the student.

34 CFR 300.347-348

K.A.R. 91-12-41(h) and (i)

- 9. Students in State Schools. For any exceptional student who is referred to or placed by an LEA in a State school, the LEA shall:
 - a. include a representative from the State school in the initial IEP conference with the parent and LEA personnel; and

- b. participate with the parents and State school personnel in review or revision of the IEP in a meeting which may be initiated by the State school at the discretion of the LEA.

K.A.R. 9-12-30(b)

K.A.R. 91-12-41

10. LEA Responsibility for Transfer Students. Any exceptional student who transfers from one LEA program to another shall be placed in the special education service program which appears to be most suited to the student's needs. The placement decision must be mutually agreed-upon by the parent(s) and representative(s) of the receiving LEA. For exceptional students transferring from out of state, a comprehensive evaluation to determine the appropriateness of the IEP and the current placement shall be instituted and completed within thirty days from the date of enrollment of the student in the receiving agency. For students transferring from another Kansas LEA, the receiving LEA may, after reviewing the student's records, opt to implement the current IEP as written.

The receiving agency shall be responsible for developing and implementing an IEP for any student placed in its jurisdiction by court order and determined by the receiving agency to be exceptional.

When an exceptional student transfers to another agency's educational program, the previous LEA shall forward the IEP to the receiving program as quickly as possible. If a student must have both an IEP and an individual service plan under another State or Federal program, it may be possible to develop a single, consolidated document provided that:

- a. it contains all the information required in an IEP, and
 - b. all of the necessary parties participate in its development.
11. Interim IEP. An interim IEP may be developed to allow temporary special education placement of an exceptional student before the IEP is finalized, if:
- a. the student has been receiving special education in another agency and moves to another community and the current IEP is not immediately available; or
 - b. the student has been determined, through the comprehensive evaluation, to be eligible for special education, but more information is needed to determine the most appropriate placement;
 - c. an interim IEP is developed which sets out the specific conditions and time lines for the interim placement;
 - d. the student's parents give written consent to the interim placement before it is carried out;
 - e. a specific period of time, not exceeding thirty calendar days, is set for completing the IEP and making decisions about the most appropriate placement; and
 - f. a meeting is conducted at the end of the interim period to finalize the student's IEP according to the above requirements.

Note: An interim IEP may not be written prior to determining that a student is exceptional through a comprehensive evaluation. If, however, an evaluation is conducted and the student is found to be exceptional but more information is needed to determine the most appropriate placement, it is appropriate to develop an interim IEP.

Procedures

1. Time Line for Implementation. It is expected that an exceptional student's IEP will be implemented immediately after the IEP is written and parents consent to the recommended placement. Exceptions to this might be when:
 - a. the IEP meeting was held during a vacation period; or
 - b. circumstances require a short delay, e.g., arranging for transportation or negotiating contracts for services.
2. When IEP May be Developed/Revised. The IEP meeting may be held:
 - a. following the staffing conference which culminates the comprehensive evaluation or reevaluation provided that:
 - (1) parents have been properly notified of this intent and given opportunity to participate, and
 - (2) the legally required participants, as specified above, are in attendance;
 - b. or the IEP meetings may also be held any time during the year as long as each student's IEP is in effect at the beginning of the school year. Many LEAs prefer to hold the meetings on the anniversary date of the last IEP meeting on the student. The timing, however, is left to the discretion of the LEA. In the year in which a triennial reevaluation is being conducted for a student, it is recommended that the meeting be scheduled so that the results of the evaluation may be used in revising the IEP.
3. Participants. The representative of the LEA, other than the student's teacher(s) should be a person authorized to make administrative decisions and to allocate resources. This person should be able to ensure that whatever services are set out in the IEP will actually be provided. For a student who requires only a limited amount of special education services, the agency representative could be a special education teacher or related services professional other than the student's teacher.
4. Notification of Meeting. Written notification of an IEP meeting is not required. When parents are notified by other means (e.g., telephone or personal contact), the date and content of the communication should be recorded. Such records may be used to document that proper and timely notification was given.

The notice must include information about who will be at the meeting. Where possible, the LEA should give both the name and position of each person who will attend. In addition, parents should be informed of their right to bring other participants to the meeting. It is appropriate for the LEA to ask whether the parents intend to bring a participant with them.

5. Parental Participation. In meeting the requirement that a reasonable attempt be made to obtain parental participation, consideration should be given to the parent's work schedules, transportation, or child care needs. School personnel's work schedules and the school calendar also should be considered. Offering more than one option as to a time for the meeting or the opportunity for the parents to participate through an individual or conference telephone call shall be considered to be a *reasonable attempt*.

When documenting failure to obtain parental participation in the IEP, the LEA should make and keep on file:

- a. detailed records of telephone calls made or attempted and the results of those calls;
 - b. copies of correspondence sent to parents and any responses received; and
 - c. records of home visits or visits to the parent's place of employment and the results of these visits.
6. **Level of Performance.** The statement of current level of performance must be based on the results of the most recent assessment data on the student. For a student entering special education for the first time, the results of screening, preassessment, and the comprehensive evaluation should be summarized. Subsequent IEPs should be updated on the basis of formal and informal evaluation of the student's progress. The statement should provide a profile from which instructional needs can be identified and prioritized.

The statement should be written in terms that accurately describe the effect of the student's exceptionality on his/her ability to learn. Test scores may be used if they can be interpreted not only by all participants at the IEP meeting, but also by a receiving school should the student transfer to another LEA.

7. **Annual Goals.** Annual goals are written to give program direction to those persons who will be implementing the IEP. They are statements of what the exceptional student can reasonably be expected to accomplish within a twelve-month period. Each goal should be directly related to some aspect of the student's current level of performance which, in the opinion of the IEP team, requires some type of special education intervention. IEP goals and objectives should focus primarily on the special education and related services needed by the student and are not required to cover other areas of the student's education.

The entire curriculum need not be addressed. Annual goals should focus on a group or cluster of skills in one instructional area such as:

- a. a curriculum area such as reading, mathematics, English, study skills, social studies, science, fine arts, or preacademic skills;
- b. personal, social, or behavioral skills;
- c. cognitive skills;
- d. independent living skills;
- e. physical/motor skills;
- f. communication skills; or
- g. vocational/prevocational skills.

If a student is determined to need adaptive physical education or special vocational training, goals and objectives for these areas should be included. Goals and objectives also should be written for related services needed by the student, such as counseling, physical therapy, and school social work.

8. **Objectives.** The IEP is not intended to provide instructional lesson plans which deal with very specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. The purpose of the short-term objectives is to provide progress checkpoints for the IEP implementers. They should be projected to be accomplished over an extended period, for

example, twelve weeks or an entire school semester. The objectives serve as a guide from which detailed instructional plans may be written.

More than one objective must be written for each annual goal. The objectives should be sequential steps leading toward achievement of the goal. They must be measurable.

IEP objectives and evaluation procedures and schedules must be written in the IEP meeting prior to placement. Once the student is placed, the teacher may develop lesson plans or more detailed objectives based on the IEP. However, such plans and objectives are not required to be a part of the IEP.

A change in IEP goals and/or objectives constitutes a revision of the student's IEP. Before revising an IEP the LEA must:

- a. notify the parents of the proposed change, and
- b. initiate an IEP meeting.

Note: If parents are unwilling or unable to attend such a meeting, their participation in the revision of IEP objectives can be obtained through other means, including individual or conference telephone calls.

9. Procedures for Determining Progress on IEP Objectives. The IEP must contain objective criteria, evaluation procedures, and data collection schedules for determining the extent to which objectives are being achieved. This means that the IEP document must show how and when pupil progress toward stated objectives will be measured. The IEP team must specify the level of behavior which must be performed by the student: to consider the objective mastered (criteria) and, where, when, and how the student will perform the behavior (procedures and schedules). One example of procedures is post-testing at a designated time on skills specified in the objective and comparing the results with the pretest status of student skills. Teacher, parent, student, and/or peer judgment are acceptable as evaluation procedures if standards/criteria for making these judgments have been established.

The school may not be held responsible if a student does not achieve the growth projected in the IEP goals and objectives. If goals and objectives have been set too high or too low, the IEP should be revised.

10. Statement of Services Needed. Local education agencies are legally bound to designate in the IEP all of the special education and related services needed by the student as determined by the student's current evaluation including extended school year services and transportation. The special education and related services included in the IEP must be provided.

The amount of services to be provided must be stated in the IEP so that the level of the agency's commitment of resources will be clear to parents and other team members. The IEP must include a statement addressing any unique media, methods, equipment, or behavior management procedures not ordinarily available to all students, but needed by a particular student for learning.

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the student can participate in regular education. If an exceptional student can participate fully in the regular physical education program without any special modifications, it is not necessary to describe or refer to physical education in the IEP. If, however a student needs a specially designed/adapted physical

education program, that program must be addressed in all applicable areas of the IEP, e.g., present levels of performance, goals and objectives, and services to be provided.

Any modifications (supplementary aids and services) to the regular education program which are necessary to ensure the student's participation in that program should be described in the student's IEP. Examples of such modifications include preferential seating for students with hearing impairments, allowing students with learning disabilities to respond individually and verbally to tests in content areas, and additional "passing time" between classes for students with impaired mobility.

11. Draft IEPs. It is not permissible for an LEA to present a completed IEP to parents for approval before there has been a full discussion with the parents of:

- a. the child's need for special education and related services, and
- b. what services the LEA will provide for the child.

It is appropriate, however, for LEA staff to come to the IEP meeting prepared with evaluation findings, statements of educational performance, and recommended goals, objectives, and services. They must make it clear to parents at the onset of the meeting that the recommendations are not final and are presented only for review and discussion with the parents. After the initial IEP meeting, it is permissible for the LEA to prepare a draft IEP and to send it to the parents prior to the annual review. The document should be clearly identified as a draft that will be revised as necessary at the meeting. This practice allows parents time to consider the school's recommendations and to prepare their response.

LEAST RESTRICTIVE ENVIRONMENT

Introduction

Least restrictive environment is the term used to describe a concept which grew out of a national movement to include persons with handicaps in the mainstream of community life. Prior to 1970, many handicapped children and youth were excluded from the public education system or were placed in segregated educational environments. To address this problem, the Education of All Handicapped Children Act (P.L. 94-142) requires that in order to qualify for Federal assistance under the Act, a state must establish: *Procedures to assure that to the maximum extent appropriate, handicapped children, including children in public and private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.* . . . U.S.C. §1412(5)(B). Unlike other concepts set forth in the Act, the least restrictive environment principle is not entirely applicable to gifted education. Although multiple placement options must be available for both handicapped and gifted students, the notion that decisions about placement should begin with a presumption in favor of integration, is not appropriate for gifted students. This section, with the exception of statements about placement options and comparable facilities, is focused on the policies and procedures necessary to the right of students with handicaps to be included to the maximum extent appropriate in the regular education environment. Requirements which apply to gifted students use the terms exceptional or gifted; requirements using the term handicapped do not apply to gifted students.

Definitions

1. *Educational placement* means the special education and related services specified in a student's current individualized education program (IEP) and the instructional environment in which these services are provided.
2. *Equally effective nonacademic or extracurricular services or activities* means a nonacademic or extracurricular service or activity which affords a handicapped student an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as a nonhandicapped peer, and to ensure participation appropriate to the student's needs. Segregated activities shall not be maintained solely for the reason that they are "equally effective." While a student is in a segregated facility, the student shall be given the opportunity to participate in activities with nonhandicapped students.
3. *Instructional environment* means the type of delivery model used to provide special education and related services to a student, e.g., regular education class, special education class, special school, home, or hospital.
4. *Maximum extent appropriate* means the integration of handicapped and nonhandicapped students in instructional and noninstructional environments consistent with the ability of the handicapped students to achieve satisfactory educational performance.
5. *Nonacademic and extracurricular services and activities* include but are not limited to the following services and activities when provided by an LEA:

- a. counseling services,
- b. athletics,
- c. transportation,
- d. health services,
- e. recreational activities,
- f. referrals to agencies which provide assistance to handicapped persons,
- g. assistance in making outside employment available,
- h. recess periods, and
- i. special interest groups or clubs.

If a student is placed in a segregated facility, the student shall be provided the opportunity to participate in nonacademic and extracurricular activities with nonhandicapped students.

Note: Counseling services, transportation, and health services may also be considered related services depending upon the individual needs of the student as identified by the IEP committee.

- 6. *Regular class or regular classroom* means a specific instructional grouping within the regular educational environment.
- 7. *Regular education environment* means the regular classroom and any other instructional setting in which both regular and special education services may be provided to both handicapped and nonhandicapped students.
- 8. *Removal from regular education environment* means placement in special education and/or related services for more than 60 percent of the student's educational program.
- 9. *Satisfactory educational achievement* means:
 - a. for a handicapped student currently receiving special education and related services, satisfactory progress as determined by the IEP committee toward the attainment of the annual goals and short-term objectives contained in the student's current IEP;
 - b. for a handicapped student enrolled in the school of a local education agency but not currently receiving special education and related services,
 - (1) performance at or not significantly below grade level or the expected performance level for the student's chronological age and ability level or
 - (2) documented positive response to one or more regular education interventions;
 - c. for a handicapped student not currently enrolled in any LEA,
 - (1) performance at or not significantly below the ability level for the student's chronological age while enrolled in a preschool program or
 - (2) satisfactory educational progress in a trial educational placement.
- 10. *Special secure setting* is an instructional setting which is determined by noneducational personnel. Examples include a correctional facility or restriction to a ward for an exceptional student confined to a treatment facility. If a student is placed in a special secure setting, the student shall be provided the opportunity to participate in activities with nonhandicapped students.

11. *Supplementary aids and services* means special instruction, instructional support services, materials, or equipment provided in conjunction with regular classroom instruction including consultant teacher, itinerant instruction, resource room instruction, tutoring, instructional support provided by teacher aides and paraprofessional personnel, technology, readers, and interpreters.

Policies

1. **Right to Least Restrictive Environment.** Handicapped students have the right to be educated, to the maximum extent appropriate, with students who are not handicapped. They shall be removed from the regular educational environment only when the nature and extent of their handicapping condition is such that education in regular classes, with supplementary aids and services, cannot be achieved satisfactorily. This provision applies to all handicapped children and youth, including those in public or private institutions or other care facilities.

34 CFR 300.550

K.A.R. 91-12-35

2. **Placement/Service Options Required.** Each LEA shall provide:
- a. support services to enable each handicapped student to remain in a regular class placement to the maximum extent appropriate, and
 - b. a continuum of placement options so that there is the least necessary deviation from the educational and curricular experiences provided for a handicapped student and his or her nonhandicapped peers. Gifted students also shall have the availability of a continuum of placement options so that their unique learning needs may be met. The placement options shall include opportunities for handicapped and gifted students to receive:
 - (1) regular classroom instruction for the entire school day with special materials, equipment, modification to the regular instructional program, and/or indirect services provided by special education or related services personnel;
 - (2) regular classroom instruction for 95-100 percent of the student's educational program, with special education and/or related services for the remainder of his/her program;
 - (3) regular classroom instruction for 80-94 percent of the student's educational program, with special education and/or related services for the remainder of his/her program;
 - (4) regular classroom instruction for 40-79 percent of the student's educational program, with special education and/or related services for the remainder of his/her program;
 - (5) instruction in a special classroom for more than 60 percent of the student's educational program with instruction in the regular classroom for the remainder of his/her program. This and subsequent placements shall be considered as removal from the regular educational environment;
 - (6) full-time instruction in a special education classroom, with opportunities for participation with nonhandicapped students in nonacademic and extracurricular activities;

- (7) instruction in a separate special school for most of the school day, with instruction in the regular classroom for part of the school day or opportunities for participation in nonacademic and extracurricular activities in a regular school setting;
- (8) full-time instruction in a separate special school;
- (9) instruction provided in hospital setting or residential facility on an individual or group basis;
- (10) instruction provided on an individual basis in a home (it should be noted that home-based instruction is not necessarily considered as most restrictive for preschool age); and
- (11) instruction provided in a special secure setting.

These placement options shall be made available to the extent necessary to implement the IEP for each handicapped student in the LEAs jurisdiction. Enrollment in the State schools for the Visually Handicapped and the Deaf may be used to provide these placement options.

Note: Generally least restrictive environment has been implemented by providing a continuum of placement options ranging from the least restrictive to the most restrictive. One danger in this approach is that available services rather than the needs of the student may influence placement decisions. To minimize this possibility, placement options are described in terms of student participation rather than the role of the teacher or related service provider. The departure from traditional descriptions of consulting teacher, itinerant, resource, and self-contained programs is also more compatible with current practice. Programs described as "resource rooms" frequently serve as self-contained programs for students who require this level of service.

34 CFR 300.551

K.A.R. 91-12-35(b)

34 CFR 300.552(b)

3. **Determination of Educational Placement.** The IEP committee shall be composed of those persons required by K.A.R. 91-12-41(b) to determine educational placement. The written notice which is given to parents prior to any special education placement action shall contain a description of the educational placement options which were considered by the IEP committee and the reasons for rejection of those options.

Educational placement decisions shall be based on each student's particular needs and the needs identified on the student's IEP. The LEA shall not routinely place all students with the same handicapping condition in the same program, nor shall placement in a restrictive setting be the only educational option considered for all students in a given category.

The placement of a handicapped student in a restrictive setting, however, is not prohibited if the placement decision is based on the student's unique needs. Decisions regarding least restrictive environment shall not be limited to those special education and related services currently available within the LEA, but shall reflect the educational needs of the student.

34 CFR 300.504(a)

K.A.R. 91-12-35(a)

34 CFR 300.505(a)(2)

K.A.R. 91-12-40(d)(7)

34 CFR 300.533

K.A.R. 91-12-46

4. Nonacademic and Extracurricular Activities. Each LEA shall provide age-appropriate opportunities for the participation of handicapped students with nonhandicapped students in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs and interests of the handicapped students.

34 CFR 300.306(a)
34 CFR 300.553

K.A.R. 91-12-35(c)

5. Comparable Facilities. All facilities for exceptional students shall be comparable to those for nonexceptional students within the same school building. If an LEA operates a facility solely for exceptional children, the facility and the services and activities provided in the facility shall be comparable to those provided by the LEA for nonexceptional children. (See Facilities, Chapter IX.)

K.A.R. 91-12-38

6. LEA Responsibilities. Each LEA shall establish appropriate administrative policies and procedures to assure that availability of an appropriate education for each handicapped student and a systematic review process to assure that his or her educational placement is in accordance with the least restrictive environment principle. These policies and procedures shall describe each step of the process and the title of the person or persons responsible for completing the step. Documentation that a systematic review has occurred shall be maintained by the LEA and all policies and procedures shall be included in the LEAs local comprehensive plan for special education which shall be reviewed by the Special Education Administration Section, Kansas State Department of Education (KSDE).

Each LEA shall maintain records of the number of exceptional children, by age and by category, who are participating in regular education programs and those who are in separate classes, separate school facilities, or who are otherwise removed from the regular educational environment. These data shall be submitted at least annually to the Special Education Administration Section, KSDE in a format specified by the department. KSDE shall tabulate these data and submit a State report to the Office of Special Education Programs, U.S. Department of Education.

34 CFR 300.132
34 CFR 300.555

K.A.R. 91-12-35(e)

7. KSDE Responsibilities. KSDE shall disseminate policies and procedures for implementation of the least restrictive environment principle. Technical assistance is available through KSDE and may be requested by LEAs. KSDE shall provide such assistance to any LEA found to be in violation of least restrictive environment requirements through monitoring activities or complaint investigation.

34 CFR 300.555

Procedures

1. Determination of Initial Placement. In determining the proposed initial placement of a student, the IEP committee should:
- review information from a variety of sources, including aptitude and achievement tests, teacher recommendations, the student's physical condition, social or cultural background, and adaptive behavior, and shall assure that information from all of these sources is documented and carefully considered;

- b. consider the current level of performance, goals, and objectives; and
 - c. consider the educational and social/emotional consequences of suggested placements on the student's opportunity for satisfactory educational achievement.
2. Basis for Recommended Placement. The IEP committee should recommend educational placement of the student in the regular educational environment unless the committee determines that the special education program needed by the child cannot be provided in that setting. This determination should be based on consideration of the curricula, instructional methods, or classroom organization recommended in support of the goals and objectives contained in the IEP. Considerations include the following:
- a. Curriculum. Why can't the curriculum and/or instructional method be implemented in an environment where nonhandicapped students are present?
 - b. Staffing patterns. Could staffing patterns be changed to permit the handicapped student to be educated in an environment where nonhandicapped students are present?
 - c. Regular education classroom organization. Could the regular education classroom be organized in such a manner that the handicapped student could be educated in an environment where nonhandicapped students are present?
3. Justification for Removal from Regular Education. If the IEP committee determines that the student's educational placement should be one of the options which constitutes removal from the regular educational environment, the committee should:
- a. review the alternative placement options listed in policy statement 3 on page 44 of this section and recommend the least restrictive setting in which the special education program can be delivered;
 - b. recommend placement, if possible, in the school which the student would attend if not handicapped, and in any event, in a facility which is as close as possible to the student's home; and
 - c. recommend placement in a chronologically age-appropriate classroom and school.
4. Special Secure Settings. If the student is under the jurisdiction of a noneducational authority (e.g., law enforcement or treatment) which places the student in a special secure setting, the IEP committee shall determine the educational goals, objectives, special education, and related services for the student.
5. Extended School Term. The extension of an IEP beyond a 180 day or 1,080 hour instructional program or beyond the school calendar adopted by the local school board should not result in a more restrictive placement unless recommended by the IEP committee. However, the increased isolation of an instructional program during a period of time when nonhandicapped students are not attending school does not violate any least restrictive environment requirement.
6. Annual Review. Each handicapped student's educational placement shall be reviewed/determined at least annually and shall be based on his or her individualized education programs as specified in K.A.R. 91-12-42.

- a. if the student is currently placed in the regular educational environment, the IEP committee should recommend the continuation of that placement if the following conditions are met:
 - (1) the current goals and objectives in the student's IEP are appropriate and are being met, or
 - (2) the current goals and objectives in the student's IEP are appropriate, but are not being met because of conditions which can be altered within the regular educational setting, such as modification of the curricula, instructional methods, supplementary aids or services, and related services.
 - b. the IEP committee should recommend a less restrictive educational placement if the student has made satisfactory educational achievement and the proposed IEP could be implemented in a less restrictive setting.
 - c. the IEP committee should not recommend placement of a student in an instructional setting more restrictive than the current placement unless the IEP committee determines and documents in writing that the student has not made satisfactory educational achievement in the current placement and that failure to achieve satisfactorily could not be attributed to conditions which could be altered in the current placement, such as modification of the curricula, instructional methods, supplementary aids or services, and related services.
7. Nonacademic/Extracurricular Activities. In order to meet the requirements of 34 CFR 300.306(a) and 300.553, and K.A.R. 91-12-35, each LEA shall use the same procedures to notify handicapped students and their parents as are used to notify nonhandicapped students and their parents of the nonacademic and extracurricular services and activities which it offers. The notification shall be given in the primary language or mode of communication of the handicapped student and/or his or her parents.

In order to make a nonacademic or extracurricular service equally effective for a handicapped student, an LEA may provide it in a different manner than it is provided for nonhandicapped students. When the nature or severity of the student's handicap makes it impossible for the student to benefit from participation, even with reasonable modifications, the LEA may sponsor separate services and activities.

8. LRE for Preschool-Age Students. Least restrictive environment requirements apply to preschool as well as school-age handicapped students. If the LEA does not operate programs for nonhandicapped preschool students, the least restrictive environment requirements may be met by alternative means such as:
- a. establishing an integrated early childhood program which serves both handicapped and nonhandicapped students in a single classroom setting with handicapped students constituting a higher proportion of the classroom population than that found in a regular preschool setting; or
 - b. contracting for services with preschool programs, including Head Start, serving nonhandicapped students; or
 - c. locating the LEA preschool program in a regular elementary school building.

The use of facilities which are separate or otherwise solely devoted to the handicapped is permissible only when necessary to meet an individual preschool student's specific needs.

Local education agencies are not required to establish preschool programs for nonhandicapped students for the sole purpose of being able to implement the least restrictive environment principle. Similarly, LEAs are not required to establish extensive contract programs with private preschools solely to implement the least restrictive environment principle.

VI

EXTENDED SCHOOL TERM

Introduction

Neither the law nor the regulations under EHA specify the length of the school term. In an attempt to determine the requirements for an extended school term, the courts have considered the intent of the Act. The consensus of the court cases mandate that the needs of each child must be individually considered to determine if the student requires the provision of extended school term services. In Kansas, these services would be provided during the summer in addition to the minimum of 180 days or 1,080 hours required by Kansas law or the local school board's adopted calendar. The individualized education program (IEP) team will determine the need for extended school term services based on the significant educational regression of the student. Using this criterion, gifted students would not be eligible for these services; however, this does not preclude the LEA from providing summer school for gifted and handicapped students who do not meet this criterion.

Definitions

1. *Extended school term services* means State approved special education programs, alternative instructional arrangements, and/or related services made available to handicapped students beyond the completed minimum of 180 days or 1,080 hours of instruction as required by State statutes or the school calendar adopted by the local school board.
2. *Significant loss of previously acquired skills* means that a student will regress, as a result of a break in educational programming, to the extent that it is unlikely that the student will recoup, in forty-five school days, previously acquired critical skills/behaviors.

Policies

1. IEP Team Responsibility. The IEP team is responsible for determining if any handicapped student requires an extended school term in order for that student to receive an appropriate education. The student's IEP will indicate which extended school term services will be provided.

Battle v. Pennsylvania, 1980

2. Considerations in Determination of Need. The IEP team, in determining whether extended school term services are essential for a handicapped student to receive an appropriate education which includes the furthering of self-sufficiency, personal independence, and autonomy shall consider, at a minimum, the following factors:
 - a. the indefinite or permanent nature of the student's disability;
 - b. severity of the student's disability;

- c. extent to which an interruption of the student's instructional program during the summer recess is likely to produce a significant loss of previously acquired skills which cannot be recouped within the first forty-five school days of the next school term;
- d. extent to which an interruption in the provision of related services during the summer recess would significantly and adversely affect the student's ongoing ability to benefit from special education;
- e. the least restrictive environment in which the student can successfully participate;
- f. continuity of the student's program (i.e., frequent interruptions due to illness or lack of service due to staff vacancies); and
- g. unavailability of appropriately trained staff during the regular school term.

The student's failure to achieve any or all of the instructional goals and objectives stated in the student's IEP will not be the sole factor to determine the need for extended school term services.

34 CFR 300.349

Lee v. Thompson, 1983

- 3. Compensation for Inadequate Services. The provision of extended school term services is an acceptable compensatory option for providing services to handicapped students where access to appropriate services has been limited.

34 CFR 300.304

- 4. Due Process Rights. The determination for and provision of extended school term services is a special education action which is subject to all due process rights and procedures.

34 CFR 300.500

K.S.A. 72-972

34 CFR 300.504

34 CFR 300.505

- 5. Time Line. Determination of the need for an extended school term will be made only for the subsequent summer following the school term and does not imply that the provision of an extended school term will be required for following summers.

34 CFR 300.346(d)

K.A.R. 91-12-41(b),(f)(2)

Procedures

- 1. Considerations in Determining Need for Extended School Term. The IEP team should consider the following questions to determine the need for an extended school term program:

- a. Is a significant regression anticipated if extended school term services are not provided?

The LEA is not required to provide extended services only because the student will benefit from such a program. Instead, the IEP team should determine if the regression

experienced by this individual student will significantly affect her/his maintenance of skills/behaviors.

- b. How much anticipated time will be required to recover the skills lost because of regression?

Before the LEA is required to provide extended school term services, the IEP team must determine that more than forty-five school days will be required to return the student to the former level of achievement because summer instruction was not provided.

- c. What is the nature and severity of the handicapping condition(s)?

Each student's needs must be considered individually. Students with more severe handicaps and who are removed from regular education more than 60 percent of the time are more likely to be affected by the loss of extended school term services. This point, however, is only one factor for consideration. Where a student's disability(ies) requires a highly structured program, cessation of services usually results in regression.

- d. Are there instructional areas or related services needed which are crucial in achieving self-sufficiency and independence?

Particular consideration for extended school term services should be given to students who need instruction in such self-help skills as dressing or eating, or who need continued structure to develop behavior control.

- 2. Information Needed to Support Decision. The IEP team should use the following information and data in determining the need for extended school term services:

- a. teacher assessment of the student's success with various instructional interventions;
- b. criterion-referenced and standardized test data;
- c. health and health-related factors, including physical and social/emotional functioning;
- d. past educational history, as appropriate, including any extended school term services;
- e. direct observation of the student's classroom performance;
- f. IEP goals and objectives;
- g. student performance (pretest and post-test data);
- h. behavior checklists; and
- i. parent interviews and student interviews where appropriate.

- 3. Consideration of Student Needs. The determined educational needs of the individual student will guide the IEP team in deciding:

- a. scope of the special education instructional services including the duration and content of the program;
- b. which current goals and objectives will be addressed to maintain present skills/behaviors;
- c. implementer(s) of the services;
- d. what related services will be made available; and
- e. if contracting with other LEAs or private agencies is needed.

VII

SUSPENSION/EXPULSION OF HANDICAPPED STUDENTS

Introduction

The use of suspensions and/or expulsions which result in the denial of a free, appropriate public education for students with disabilities has been the subject of several court cases, including the 1988 United States Supreme Court decision in *Honig v. Doe*. In this case the Supreme Court framed an overall process that must be followed in the suspension or expulsion of special education students. The following policies are based on the limitation set by the Supreme Court. In addition, the policies follow the opinion of the Office of Civil Rights that a suspension of more than ten consecutive days in a school year constitutes a significant change in placement which invokes the procedural safeguards of the Education of All Handicapped Children Act.

Definitions

1. *Dangerous behavior* means behavior which is an immediately endangerment to self, other persons, or property.
2. *Expulsion from school* means removal from the educational environment for a term which does not exceed the current school year.
3. *In-school suspension* means a short-term (not exceeding five days) suspension during which the student stays at school but not in the classroom to which he/she is assigned. At the discretion of the local district, the student may or may not be permitted to complete school work. The student is not under the direction of a certified teacher.
4. *Long-term suspension* means removal from the educational environment for more than five consecutive school days, not extending beyond the current school semester.
5. *Short-term suspension from school* means removal from the educational environment for a term not exceeding five consecutive school days.
6. *Supervised alternative setting*, when used as a disciplinary measure, means maintaining the student, on a temporary basis, in an educational environment other than the assigned classroom under the direction of a certificated teacher. The use of this form of management must be included in the student's original individualized education program, or may be included in an IEP revision if such use is deemed necessary. This setting allows the student to complete and receive credit for his/her work.

Policies

1. **Ten-Day Policy.** Suspension or expulsion of handicapped students, for more than ten days consecutively or cumulatively in one school year, cannot be used to deny these students special education and related services if there is:
 - a. a causal relationship between the disability and the behavior and/or

- b. the IEP team determines that the current placement is inappropriate.

Note: Disciplinary procedures which do not result in a cessation of services, such as after school detention, Saturday school, etc., do not count in the ten-day policy.

20 U.S.C. 1401

K.S.A. 72-966

Honig v. Doe

2. **Suspension as Change of Placement.** The suspension of a handicapped student for more than ten days of school, consecutively or cumulatively in one school year, constitutes a change in placement and requires that appropriate due process procedures be followed.

Honig v. Doe

3. **Supervised Alternative Setting.** A supervised alternative setting may be used as an alternative method of managing behavior and does not count in the ten-day change of placement rule. In-school suspension does count in the ten-day rule.

Honig v. Doe

4. **Suspension from Transportation.** If transportation to special education services is listed as a related service in a student's IEP, suspension or expulsion from transportation cannot deprive the student of a free, appropriate education. If the LEA does not make alternative provisions for transportation, the duration of the suspension from transportation services is counted in the ten-day change of placement rule.

34 CFR 300.13

K.A.R. 91-12-22(dd)

5. **Suspension During Comprehensive Preplacement Evaluation.** If the student has not been identified as needing special education services, but the student has been referred for a comprehensive evaluation, the evaluation process must continue even though the student is suspended or expelled.

K.A.R. 91-12-47

6. **Short-Term Suspension.** A short-term suspension may be imposed upon a handicapped student without affording the student or his or her lawful custodian an immediate hearing if:
- a. dangerous behavior is the cause for the suspension and
 - b. appropriate due process procedures are followed after the suspension is imposed.

Honig v. Doe

K.S.A. 72-8902

Procedures

1. **Short-Term Suspension.** Local education agencies may use short-term in-school or out-of-school suspension to discipline a handicapped student if the following procedures are followed:
- a. oral or written notice of an informal hearing must be given to the student, the student's lawful custodian, and the director of special education;

- b. unless the student is being suspended for dangerous behavior, an informal hearing must be held before the suspension begins. This hearing may be held immediately following the oral or written notice. The student must remain in his/her placement pending the outcome of the informal hearing.
 - c. the hearing shall afford the student the right to:
 - (1) be present,
 - (2) be informed of the charges,
 - (3) be informed of the basis of accusation, and
 - (4) defend and/or mitigate the charges;
 - d. if the proposed suspension would cause the total number of days the student has been excluded from school during the current school year to exceed ten days, the procedures for long-term suspension or expulsion must be followed.
2. Dangerous Behavior. LEAs have the right to suspend a handicapped student, without a hearing, if he/she is substantially likely to be a danger to self or others, provided that:
- a. within twenty-four hours of the suspension, a written notice of the length of suspension and reasons for the action is given the student, his/her lawful custodian, and the director of special education, and
 - b. within seventy-two hours of the suspension, an opportunity for an informal hearing as described in procedure 1(c) above, is provided.
3. Options to Pursue with Students Who Exhibit Dangerous Behavior. LEAs have certain options which may be pursued when a handicapped student has been suspended for dangerous behavior. The LEA may:
- a. identify alternate placement(s). If the parents and the LEA agree, a change of placement can be made, or
 - b. if the parents and the LEA are unable to come to agreement on an alternate placement, the LEA may file a suit under 20 U.S.C. 1415(e)(2), the Education of the Handicapped Act, which empowers courts to grant any appropriate relief. In such a suit, the LEA has the responsibility to show that maintaining the current placement is substantially likely to result in injury to the student or to others.
4. Long-Term Suspension or Expulsion. LEAs have the authority to use long-term suspension or expulsion with handicapped students by implementing the following procedures:
- a. Prior to the proposed long-term suspension or expulsion, the IEP team, which includes the parents, meet to:
 - (1) determine if the misconduct was caused by or was a direct manifestation of the student's handicapping condition, for example, the student's inability to comprehend the school district's rules of conduct; and
 - (2) determine if the current placement is appropriate.

- b. If it is determined by the IEP team that the incident was the result of the handicapping condition, an alternative disciplinary procedure must be pursued. If the team determines that the current placement is inappropriate, a change in placement to a more or less restrictive environment must be considered.
- c. If the IEP team determines there is no relationship between the student's behavior and the handicapping condition and the current placement is appropriate, the student may be suspended or expelled.
- d. If long-term suspension or expulsion is determined to be the appropriate disciplinary action:
 - (1) The student must be afforded an opportunity for a formal hearing.
 - (2) Written notice of the proposed action and charges must be given to the student, and his/her parent(s). The notice shall include the time, date, and place for the hearing. The local special education administrator should be apprised of the situation and provided with all relevant information.
 - (3) A copy of relevant State statutes and board policies must be provided to the student and his/her parent(s).
 - (4) A written report of any decision in the formal hearing to suspend or expel for over five days must be given to the local board of education that is providing the special education services and the local board of education of the district in which the student lives. The report is open to the inspection of the student and the student's parent(s) if the student has not attained 18 years of age. If the student has attained 18 years of age, the report shall be open to the parent(s) only upon written consent of the student.
- e. If an appeal is sought, the student may return to class pending the outcome of the hearing. However, if the behavior is likely to endanger the student or others, the procedures cited in procedure 3(b) may be followed.

VIII

RELATED SERVICES

Introduction

All children and youth are entitled to a free, appropriate education, including special education and related services. Related services are those services that are required to assist an exceptional child to benefit from special education. The Kansas State Department of Education recognizes for reimbursement those related services specifically listed in P.L. 94-142. *Requests for reimbursement for any other related service shall be submitted to the special education administration section. Requests shall be approved or disapproved on an individual basis (K.A.R. 91-12-60(a)).* All related services required to assist the child or youth in the educational setting should be utilized, including interpreters for non-English speaking students during the diagnostic process, but not all related services may be necessary for each individual.

Definition

1. *Art therapy* means a related service which provides therapeutic art for exceptional students; participation in the comprehensive evaluation process to assist in determining a student's handicapping condition through the art process; and the enhancement of skills in the areas of academic, perceptual motor, and verbal/nonverbal communication.
2. *Audiology* means a related service which identifies children with a hearing loss; determines the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provides habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation; and creates and administers programs for prevention of hearing loss.
3. *Counseling services* means the related services which assist in the identification of students needing referral for special education evaluation; mainstreaming special education students into the regular educational program; and individual and group counseling/consultation with parents, teachers, and students to enhance the development of the individual.
4. *Dance movement therapy* means a related service which provides for the therapeutic use of movement as a process which furthers the emotional and physical integration of the exceptional student. The dance movement therapist conducts a student assessment through movement observation, develops individualized movement programs, plans therapeutic goals based on students' demonstrated needs, and promotes skills development in the areas of movement repertoire, expressive movement, verbal/nonverbal communication, social/behavioral, preacademic, academic, and total development through the movement process. The therapist also evaluates student progress, provides training and technical assistance as a resource to teachers and parents, and participates in staffing conferences with educators including support services personnel or treatment teams.
5. *Guidance and/or school counseling services* means a related service which assists in the identification of students needing referral for special education evaluation; mainstreaming

special education students into the regular educational program; and individual and group counseling/consultation with parents, teachers, and students to enhance the development of the individual.

6. *Medical services for diagnostic and evaluation purposes* means the identification/diagnosis of medically related handicapping conditions which assist in determining the individual's need for special education and related services.
7. *Medical treatment* means services which can be provided only by a licensed physician.
8. *Music therapy* means a related service which utilizes music to affect the restoration and maintenance of mental and physical health; the participation in pupil assessment, goal formulation, program development, and program implementation; and the enhancement of skills in the areas of communication, social/behavioral, preacademic and academic, and perceptual motor through the music process.
9. *Occupational therapy* means a related service which provides for the remediation, restoration, or compensation for functions lost through illness or injury; the adaptation or modification of materials or equipment to give a student increased independence; the prevention of initial or additional deformity or disability through early intervention and programming; and the improvement of ability to perform tasks for independent functioning when functions are impaired or lost.
10. *Parent counseling and training* means the related service designed to assist parents in understanding the nature and implications of their child's or youth's exceptionality, to provide training in child development and management techniques for meeting the specific needs of an exceptional child or youth, and to provide information on community resources.
11. *Physical therapy* means a related service which provides for the assessment of children and youth whose physical handicap, motor deficit, and/or developmental delay interfere with the learning processes and physical management of the school environment; the consultation and treatment of identified children and youth which may include training of developmental motor skills, ambulation and gait training, postural awareness, use of wheelchair, orthoses (braces), and other assistive devices; the adaptation or modification of materials or equipment to give a student increased independence; and the prevention of initial or additional deformity or disability through early intervention and programming.
12. *Recreation* is the related service which assesses leisure function, provides therapeutic recreation services including play, encourages recreation programs in school and community agencies, and instructs in leisure education.
13. *School health services* means the related services which provide for the development, maintenance, and updating of individual records on every student with system of recording for identification of major health problems; the development and implementation of a plan of care for all students with major health problems, i.e., catheterization, administering of medications, changing of dressings; the liaison to the family, the physician, and other involved agencies; the promotion of wellness through health education; and the promotion of staff inservice education and training on special health problems.

14. *School psychological services* means special services which provide consultation with other school staff in planning individual programs to meet the special needs of children as indicated by interviews, behavioral evaluations, and tests; the administration and interpretation of psychological and educational tests; the consultation with teachers and other school staff concerning child behavior, modes of learning and the development of a positive learning climate; and psychological counseling for children and parents. Supplements in each categorical area and/or on each related service area may be requested from the Special Education Administration Section of the Kansas State Department of Education.
15. *School social work services* means the related services which provide for social assessment of the handicapped student; group and individual counseling with student and family; assistance with those situations in the student's living environment (home, school, community) that affect the student's adjustment in school; and the mobilization and coordination of home, school, and community resources to enable the student to receive the maximum benefit from his or her educational program.
16. *Special education administration and supervision* means the local principal administrator or administrators in the area of special education. There are specific training and certification requirements these individuals shall have before they can be approved as a director or supervisor. Some school districts or cooperative programs will have a director as well as supervisors for the various programs. A supervisor is an individual who supervises and coordinates the activities of an area of special education. This person is usually directly responsible to the director of special education and is actively engaged in curriculum development and supervision of instruction.
17. *Special music education (adaptive music)* means a related service for exceptional students which determines and implements musical and comprehensive educational goals, adapted for equal emphasis and achieved cooperatively and simultaneously. It provides music instruction which enables the student to develop concepts and skills adapted to his/her individual functioning level through educational experiences in a musical context. Special music education programs are designed to provide assessment, plan individual goals and objectives, implement individualized instruction through adapted teaching techniques, evaluate student progress, and provide consultation for parents and other professionals:
18. *Speech and language services* means the services which provide for the identification of students with speech and language disorders; the diagnosis and appraisal of specific speech and language disorders; the referral for medical or other professional attention necessary for the habilitation of speech or language disorders; the provisions of speech and language services for the habilitation or prevention of communicative disorders; and the counseling and guidance of parents, students, and teachers regarding speech and language disorders. The supplement on Speech and Language Programs may be requested from the Special Education Administration Section of the Kansas State Department of Education.
19. *Transportation*, as related to exceptional children, includes traveling to and from school, between schools, and around school buildings. Specialized equipment may include special or adapted buses, lifts, and ramps.

Policies

1. Delivery of Related Services. The purpose of these related services is to assist a handicapped child or youth to benefit from the special education services provided. Related services can be delivered directly to the student and/or on a consultative basis to the teacher/parent. The related services must be delivered by a qualified professional or, where permitted, by a person supervised by a qualified professional.

Local education agencies may:

- a. employ or contract with qualified personnel to provide related services;
- b. contract with another school district;
- c. enter into cooperative agreements with one or more districts; or
- d. contract with any accredited, private, nonprofit corporation or any public or private institution which provides proper services for exceptional students.

34 CFR 300.12
34 CFR 300.13

K.A.R. 91-12-23(a)(1)
K.A.R. 91-12-61 through
91-12-63
K.A.R. 91-12-22(a)

2. Determination of Need. The student's individualized education program plan must specify the related services needed and the intensity of the provision of those services. It is necessary to consider the student's overall educational goals and objectives when decisions are made regarding what kinds of related services are needed.

34 CFR 300.346(c)

K.A.R. 91-12-41(f)(5)
K.S.A. 72-967(a)

3. Medical Treatment. Local education agencies shall not be responsible for the delivery of medical treatment, but shall be responsible for the provision of medical services for diagnostic or evaluation purposes which are necessary to the educational planning and programming for each exceptional child.

34 CFR 300.13(a)

K.A.R. 91-12-60(b)

4. School Health Services. Local education agencies shall be responsible for the provision of school health services including procedures such as clean intermittent catheterization, which allow any child to be maintained in the least restrictive environment.

Irving Independent School
District v. Tatro

K.A.R. 91-12-60(c)

5. Generalized Mental Health. School districts shall not be responsible for psychological, psychiatric, or social services required to treat generalized mental health problems.

Psychotherapy is considered medical in nature, and its provision shall not be a responsibility of the public schools.

K.A.R. 91-12-60(d)

6. Related Services Defined as Special Education. Under Federal regulations a related service may be recognized as a special education service, at the discretion of the state, provided that the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of the child. Therefore, a related service can be treated as a special education service if a student's IEP so indicates and the team determines that the child cannot continue to function in regular education without the service.
 - a. *The following related services shall be treated as a special education service if any child's individualized education program indicates that that child cannot continue to function in regular education without the service or services:*
 - (1) *Occupational therapy, physical therapy, paraprofessionals, or transportation when needed to maintain students in regular education; and*
 - (2) *interpreters for any deaf child who, without this service, would have to be educated in a more restrictive environment.*
 - b. If verification of the above type of need is present and an IEP has been developed, local education agencies may count students receiving these services for Federal funds under the Education of All Handicapped Children Act.

34 CFR 300.14(a)(2)

K.A.R. 91-12-60(e)

7. Students in Private Schools. An LEA which provides special education and related services to pupils attending its schools shall provide on an equal basis the same services to every student (a) who resides in the LEA, (b) attends a private school within or outside of the LEA, and (c) whose parents request the services. The services shall be provided on an equal basis with those provided to students attending the LEAs schools.

Procedures

1. Delivery of Services. Paraprofessionals may be used to provide related services under the guidance of certified professionals for students receiving itinerant services. In the areas of speech, school psychology, school social work, occupational therapy, or physical therapy, paraprofessionals may be used to provide services under the guidance of certified or licensed professionals with certain restrictions. Each LEA should document the amount of time, on a daily basis, that the paraprofessional who provides related services is under the direct supervision of the professional.
2. Qualified Personnel. If related services are being provided by personnel who work in a discipline that is not certified by the Kansas State Department of Education there must be a copy of that person's license or certificate on file in the Special Education Administration Section. The KSDE shall make an attempt to obtain such copies from the appropriate licensing/certifying agencies. However, it is the responsibility of the local education agency who employs the person to see that a copy of his/her license/certificate is on file.

3. IEP Documentation. The purpose of these related services is to assist a handicapped child or youth to benefit from the special education services provided. The student's individualized education program plan must specify the related services needed and the intensity of the provision of those services in minutes per day. It is necessary to consider the student's overall educational goals and objectives when decisions are made regarding what kinds of related services are needed.
4. Medical Treatment and School Health Services. Local education agencies shall not be responsible for the delivery of medical treatment but shall be responsible for the provision of medical services for diagnostic or evaluation purposes which are necessary to the educational planning and programming for each exceptional child. Local education agencies are cautioned that the scope of each related service should not extend beyond the regulatory limits defined for that service.
 - a. Schools should keep accurate medical records of the student's condition as it relates to special education. School health services—including procedures such as clean intermittent catheterization—which allow the child or youth to be maintained in the least restrictive environment are required.
 - b. Local education agencies shall be responsible for the provision of school health services including procedures such as clean intermittent catheterization, which allow any child to be maintained in the least restrictive environment.
5. Mental Health Problems. School districts shall not be responsible for psychological, psychiatric, or social services required to treat generalized mental health problems. Psychotherapy is considered medical in nature, and its provision shall not be a responsibility of the public schools. Schools are not required to provide services which can only be provided by licensed physicians with special training and qualifications in psychiatry.
6. Related Services Defined as Special Education. In most cases local education agencies are not held responsible for related services unless services are necessary for a child or youth to benefit from special education. For example, if a child does not need special education, that child is usually not eligible for related services. However, under Federal regulations a related service may be recognized as a special education service, at the discretion of the state, provided that the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of the child. Therefore, a related service can be treated as a special education service if a student's IEP so indicates and the team determines that the child cannot continue to function in regular education without the service.
7. Related Services as Special Education. Speech/language services are considered to be special education services. The following related services also shall be treated as a special education service if any child's individualized education program indicates that child cannot continue to function in regular education without the service or services:
 - (1) occupational therapy, physical therapy, paraprofessionals, or transportation when needed to maintain students in regular education; and
 - (2) interpreters for any deaf child who, without this service, would have to be educated in a more restrictive environment.

Each LEA should keep a list of all students maintained in regular education through the provision of a related service. Additional verification in the student's records, including development of the IEP, will document that the LEA is entitled to count students receiving only related services for Federal funds under the Education of All Handicapped Children Act.

8. Provision of Related Services to Private Schools. An LEA which provides special education and related services to pupils attending its schools shall provide on an equal basis the same services to every student:

- a. who resides in the LEA,
- b. attends a private school within or outside of the LEA, and
- c. whose parents request the services.

The services shall be provided on an equal basis with those provided to students attending the LEAs schools. The LEA shall not, however, provide direct services on the premises of a parochial school.

IX FACILITIES

Introduction

State and Federal legislation requires that all children have equal opportunity to a free and appropriate public education. In order for this to occur, all educational programs and services must be accessible to children with physical and sensory handicaps which impede mobility. Safety precautions also must consider children with various handicapping conditions, such as the hearing impaired who cannot respond to auditory warning signals. Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and its effectuating regulations 45 CFR 84 detail the requirements of program accessibility. K.S.A. 58-1301 *et seq.* requires provisions for parking spaces and building accessibility for handicapped persons. In addition to Section 504, P.L. 94-142 mandates the provision of vocational services for handicapped children in the least restrictive educational environment. When handicapped children cannot be educated in the regular school setting, alternative placements, such as self-contained classrooms or special education schools, shall be comparable to other school facilities, services, and activities for nonhandicapped children.

Definitions

School facility means any setting in which instruction and school related activities occur, such as classrooms, itinerant service areas, physical education areas, and playgrounds. These also include areas for extracurricular, dining, and athletic activities.

Policies

1. Existing School Facilities. Educational programs shall be made accessible to mobility impaired students. Schools are not required to make structural changes in existing facilities when the participation of a handicapped student in classes, services, or activities can be achieved through other alternatives. For example, when parts of a building are accessible, the school can reassign the necessary classes or activities to that part of the building. A paraprofessional can be assigned to assist the student in gaining entry to less accessible areas. **Note:** Needed structural changes to facilities in existence prior to the date the Section 504 regulations became effective (June 3, 1977) were to have been completed by June 1, 1980.

34 CFR 104.22

2. New Construction. New construction, including alterations to existing school facilities shall be designed and constructed in such a manner that the new construction is readily accessible to and usable by persons with handicaps. Additionally, plans for new construction of any school facility shall provide for the accessibility, protection, health, and least restrictive environment needs of exceptional children. For legal requirements in modifying facilities for exceptional students, local education agencies may request assistance from the Legal Services Section, Kansas State Department of Education.

34 CFR 104.23

3. Comparability of School Facilities.

- a. All facilities for exceptional children shall be comparable to those for nonexceptional children within the same school building.
- b. If any local education agency operates a facility solely for exceptional children, the facility and the services and activities provided in the facility shall be comparable to those provided to nonexceptional children.

34 CFR 104.34

K.A.R. 91-12-38(a)(b)

4. Appropriateness of School Facilities. All facilities for exceptional children shall be in age-appropriate environments and each environment shall be appropriate for the instructional program being provided.

K.A.R. 91-12-38(c)

X

APPOINTMENT OF EDUCATION ADVOCATES/SURROGATE PARENTS

Introduction

Parental involvement in the educational process is an important ingredient of laws governing the education of exceptional children. A partnership between parents and educators is required to continually plan and monitor the individualized education program (IEP) developed for the child. However, the law recognizes that not all children have an available parent and that these children need to be represented when educational decisions are being made on their behalf. In such circumstances, the law requires the appointment of a qualified person to act in the absence of the parent in all special education actions and related activities. Federal law refers to such a person as a surrogate parent. In Kansas this person is known as an education advocate. A surrogate parent/education advocate enters into a partnership with the school on behalf of his or her assigned child, and in effect, becomes the "parent" who makes all educational decisions for that child.

Definitions

1. *Child in need of care* is defined in K.S.A. 38-1502 and refers to a child over whom the court has acquired jurisdiction by the filing of a petition pursuant to the Kansas Code for Care of Children.
2. *Consent* means that parental approval for a special education action has been given after the parent has been fully informed of all information relevant to the activity for which consent is sought, including a description of that activity. Signed parental consent shall be valid only for the activity described. K.S.A. 72-972 states that the parent of the involved child may revoke his or her consent to the proposed action at any time and may, but is not required to, request the hearing provided for in this section of the law.
3. *Special education action means any act on the part of a local education agency by which a child is:*
 - (1) *Excluded, reassigned, or transferred from regular school classes upon the basis that the child is an exceptional child and cannot benefit from these classes;*
 - (2) *placed in, transferred to or from, or denied placement in special education services.*

Special education action includes:

- (A) *Any initiation or refusal to initiate a comprehensive evaluation to determine eligibility for special education services; and*
 - (B) *any change in programming which alters the type or intensity of special education services offered an exceptional child (K.A.R. 91-12-22(oo)).*
4. *Unavailable parent* means a parent or guardian who cannot be involved personally, via telephone or U.S. mail, in planning or monitoring their child's special education program. A parent is considered unavailable if he or she has been prohibited by court order from having contact with his or her child. Parents also may be *unavailable* because of illness, injury, or institutionalization.

5. *Unknown parent* means a parent or guardian who cannot be identified by an agency, e.g., those persons or agencies dealing with the child literally do not know the whereabouts of the child's parent or guardian.

Policies

1. Appointment. An education advocate shall be appointed for any child who appears to be exceptional if the parental rights are terminated or the child's lawful custodian is unknown or unavailable. *When the custodian of the child is the secretary [of Social and Rehabilitation Services], and the child appears to be an exceptional child who requires special education services, the secretary shall immediately (within two working days from the date of making a determination) notify the state board of education, or a designee of the state board, and the school district in which the child is residing that the child is in need of an education advocate. As soon as possible after the notification by the secretary of the need by a child of an education advocate, the state board of education, or its designee, shall appoint an education advocate for the child.* The designee of the State Board of Education is the director of the Special Education Administration Section of the State Department of Education (K.S.A. 38-1513a).

34 CFR 300.514(a)(b)

K.A.R. 91-12-72(a-c)

2. Rights of an Education Advocate. When a person has been appointed by the State Board of Education to be an education advocate for a child in accordance with the provisions of K.S.A. 38-1513a, and K.S.A. 72-962, all of the rights afforded to the lawful custodian of an exceptional child under State and Federal law shall be afforded to the education advocate, including the right to:
- a. written prior notice whenever an LEA proposes a special education action;
 - b. inspect and review all education records with respect to identification, evaluation, placement, and provision of a free, appropriate public education for the child;
 - c. consent or refuse consent for the LEA to release education records;
 - d. consent or refuse consent for an LEA to conduct a preplacement evaluation individually or place a child in special education services;
 - e. be informed of and to attend IEP meetings;
 - f. be provided a copy of the IEP; and
 - g. be notified of long-term or short-term suspension or expulsion.

34 CFR 300.514(e)

3. Qualifications of Education Advocates. A person appointed to be an education advocate shall:
- a. be 18 years of age or older,
 - b. have knowledge and skills that ensure adequate representation of the child, and
 - c. have provided three references for appointment as an education advocate.

Note: KSDE has developed a four-hour training session covering the education advocate's role and responsibilities in the identification, evaluation, and placement of the child in special education services which must be attended by any person before appointment as an education advocate.

34 CFR 300.514(c)(2)(ii)

K.A.R. 91-12-71(a)

4. Eligibility to Serve as Education Advocate. A person appointed as an education advocate for a child shall not:
- have interests that conflict with the interests of the child he/she represents,
 - be an employee of the agency which is required by law to provide special education services for the child, or
 - be an employee of any other agency which is directly involved in providing educational services for the child.

Social and Rehabilitation Services (SRS) caseworkers, foster parents, group home workers, retired professionals such as teachers, school administrators, school psychologists, counselors and social workers, and local community volunteers may serve as an education advocate. Appointments, however, shall follow the following rules:

- If a child is in a state institution, the appointed educational advocate shall not be a social and rehabilitation services employee;*
- if a child is in a permanent foster care placement, the educational advocate may be the foster care provider;*
- if a child is in a constant foster care placement and is expected to remain in that placement for one year, the educational advocate may be the foster care provider; and*
- if a child is not in a state institution, the educational advocate may be a social and rehabilitation services social worker (K.A.R. 91-12-72(c)).*

34 CFR 300.514(a)

K.A.R. 91-12-71(a)(b)

34 CFR 300.514(c)(2)(i)

5. Training. Any person selected as an education advocate shall complete a training program respecting the powers, duties, and functions of a lawful custodian in order to acquire the knowledge and skills that ensure adequate representation of the child. An individual may be formally appointed as an education advocate by the State Board of Education upon completing one education advocate training session. Education advocate training sessions are conducted regionally during the school year by KSDE or an agency/organization designated by KSDE to carry out the training.
6. Responsibilities of an Education Advocate. The education advocate represents the child in all matters relating to identification, evaluation, educational placement, and provision of a free, appropriate public education. An education advocate assumes no financial responsibility or other responsibility for the day-to-day care of his or her assigned child. *Any person appointed as an educational advocate shall:*

- (1) *Vigorously protect the child's rights in the education and decision-making process including the identification, evaluation and placement of the child;*
- (2) *comply with applicable confidentiality requirements imposed by state and federal law;*
- (3) *actively participate in the development of the child's individualized education program; and*
- (4) *diligently exercise all the other rights given to lawful custodians under the special education for exceptional children act (K.A.R. 91-12-71(a)).*

34 CFR 300.514(e)

K.A.R. 91-12-71(a)

7. Conditions Requiring Cancellation of Appointment. Education advocate appointments will be cancelled under the following circumstances:

- a. the parent appears to represent his or her child;
- b. the child moves to a new location, e.g., from one community placement to another or from a community placement to an SRS institution or vice versa and the new placement is not within driving distance from where the education advocate resides;
- c. there is a conflict of interest;
- d. the child has reached 18 years of age and has not been adjudicated as incapacitated;
- e. the education advocate resigns his or her appointment.

8. LEA Responsibility. Before taking any special education action in regard to any child, each local education agency shall:

- (1) *Attempt to determine who is the lawful custodian of the child;*
- (2) *if the lawful custodian of the child cannot be determined or cannot be found, cause proper proceedings to be instituted, pursuant to the Kansas code for care of children, to determine whether the child is in need of care;*
- (3) *if the child is in the custody of the secretary of social and rehabilitation services and the parent is unknown or unavailable, notify the appropriate area office of the department of social and rehabilitation services; and*
- (4) *mail or personally deliver to the lawful custodian (educational advocate) the written notice required by K.S.A. 72-972, and any amendments to this statute (K.A.R. 91-12-44(e)).*

34 CFR 300.514(b)

K.A.R. 91-12-44(c)

Procedures

1. LEA Responsibility. Before taking any special education action in regard to a child, an LEA should follow the following procedures:

- a. For a child who is not living with a natural parent, step parent, or guardian and who is not in the custody of SRS, the local education agency must attempt to locate the natural parent at the last known address. If attempts to contact the child's natural parents are

futile, the LEA must contact the appropriate Area Office of the Department of Social and Rehabilitation Services and request that a determination be made as to whether the child is a child in need of care and requires the appointment of an education advocate. At least two attempts should be made to contact the parent. The parent will be considered to be "unknown" or "unavailable" if the LEA or SRS fails to contact the parent through phone calls and home visits or if there is no response after thirty days to a letter (sent by certified mail) giving the parent notice of the intent to take a special education action. A log of phone calls, visits, and copies of letters shall be kept as documentation of attempts to contact or locate the parent.

If a child is living with a "person acting as parent" that person is the child's lawful custodian and an education advocate does not need to be appointed. A "person acting as parent" may be a person who has physical and legal custody of a child, or whom by law is liable to maintain, care for, or support the child. It may also be a person who is contributing the major portion of the cost of support of the child. Examples of such persons may be other relatives of the child, such as a grandparent, aunt, or adult sibling.

- b. If an LEA believes that a child may be in need of special education services and that child's parents are unknown or unavailable, the LEA shall request a proceeding to be instituted pursuant to the Kansas Code for Care of Children to determine whether a child is a "child in need of care."
- c. If a child is in the custody of SRS, the request for an education advocate should be made by the LEA to the child's primary SRS caseworker. SRS will determine whether the child requires an education advocate and will contact the Special Education Administration Section to request an appointment by the State Board of Education if necessary.

The State Department of Education may only accept a request for the appointment of an educational advocate from an SRS employee. School district employees who contact KSDE to request appointment of an education advocate will be asked to call the child's primary SRS caseworker.

2. **SRS Determination of Need for Education Advocate.** The SRS Youth Services Commission's procedures manual specifies that whenever SRS social service staff make the determination that a child in SRS custody appears to be an exceptional child who requires special education services and the parents may be unknown or unavailable, SRS shall:
 - a. Document in the case record that the parents are unknown or unavailable (unavailable includes parents whose parental rights have been terminated, or parents with whom SRS or the LEA has had two unsuccessful attempts to locate or contact). Children who have been placed in the custody of SRS by the court are the easiest group to identify and potentially constitute the largest population of students needing education advocates.
 - b. Within two working days of completing step "a" above, SRS staff shall inform the Special Education Administration Section and the school district that the child is in need of an education advocate by sending a letter.
3. **Determination of Unavailable Parent.** It is difficult to determine when a parent is unavailable. A clear distinction must be made between "unavailable" and "unwilling." An uncooperative parent is not necessarily an unavailable parent. A parent who can be located and who can be reached by registered mail, visitation, or telephone is not unavailable even though he or she may not respond to the school's attempts to involve him or her in their child's education, specifically in granting consent for special education actions or the development of an IEP. Such a parent must be dealt with through a court order or due process hearing.

4. Education Advocate Training. An individual becomes eligible for appointment as an education advocate after completing one education advocate training session. These training sessions cover the education advocate's role in the special education process and are conducted regionally during the school year by KSDE or an agency/organization designated by KSDE to carry out the training. The training sessions are aimed at preparing individuals to assume the responsibilities of an education advocate. Once an individual has completed an education advocate training session he/she must complete an application form and present references.

Education advocate training sessions are open to all interested persons. Natural parents, guardians, step parents, and persons acting as parents are encouraged to attend.

During fiscal years 1991-1993, it is anticipated that KSDE will contract with Families Together, Inc., to recruit volunteers to serve as education advocates, to conduct the training, and to be responsible for verifying and reporting to the KSDE that applicants meet the requirements in K.A.R. 91-12-71(a).

5. Appointment by KSDE. Upon receipt of a phone call or letter from SRS requesting the appointment of an education advocate, the Special Education Administration Section will attempt to complete the appointment within two working days of notification. Staff will contact trained education advocates located as close as possible to the child's current placement.

When an education advocate has been found, a letter is prepared by the KSDE formally appointing the person as the education advocate for a child. The letter is signed by the director of the Special Education Administration Section. The original appointment letter goes to the education advocate, one copy goes to the special education director at the child's current placement, and another copy goes to the child's primary SRS social worker to be placed in the child's case record.

When it is determined that an education advocate appointment needs to be cancelled, a letter is prepared by the KSDE formally cancelling the education advocate appointment. The original cancellation letter goes to the education advocate, one copy goes to the special education director at the child's current or new placement, and another copy goes to the child's primary SRS social worker to be placed in the child's case record.

XI

CONFIDENTIALITY

Introduction

The Kansas State Board of Education ensures the protection of the confidentiality of any personally identifiable data collected or maintained pursuant to the identification and evaluation of students for purposes of placement in special education and pursuant to the provision of special education and related services for such students. Kansas local education agencies, the State Department of Education, and all State and local agencies participating in the identification, location, evaluation, and provision of special education and related services for exceptional students shall be responsible for ensuring confidentiality.

Under K.S.A. 72-6214, the State Board of Education and the board of education of any school district must adopt a policy in accordance with applicable Federal laws and regulations to protect the right of privacy of any student and his or her lawful custodians regarding personally identifiable records, files, and data directly related to such student.

The most significant Federal law addressing confidentiality is the Family Educational Rights and Privacy Act (FERPA) which went into effect in late 1974. FERPA is often referred to as the "Buckley Amendment" after the author, former U.S. Senator James Buckley of New York. The Act, with its subsequent amendments and regulations, set forth the access rights and privacy rights to personal school records for all the nation's students and their lawful custodians. In 1975, Congress passed P.L. 94-142, Education of the Handicapped Act (EHA). This Act, its subsequent amendments and regulations, extend and expand the confidentiality provision in FERPA to handicapped students. Kansas Administrative Regulations (K.A.R. 91-12-44, 45 and 46) in conjunction with this document, set forth the requirements and policy with respect to the confidentiality of records of handicapped students in Kansas.

Definitions

1. *Authorized employees* means persons within the education agency who have a legitimate educational interest in the individual child.
2. *Confidentiality* means the protection of personally identifiable information at all stages including the collection, use, and maintenance of education records.
3. *Directory information* means information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency attended (34 CFR 99.3).

4. *Education records* means those records, files, documents, and other materials which:
 - a. are maintained by an educational agency or institution, or by a person acting for such agency or institution;
 - b. contain information directly related to a student; and

The term education records does not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record (34 CFR 99.3). For the purpose of this definition, substitute means an individual who is carrying out the responsibilities of the person who made the record on a short-term basis. It does not refer to an individual who permanently succeeds the maker of the record in his/her position.

5. *Inspect and review* means the right of parents or eligible students to gain an understanding of information contained in the educational records.
6. *Legitimate educational interest* means having an educational reason for access to records. Persons who do not have direct or indirect special education and related services or regular education contact with the child shall not have access to his/her records.
7. *Notify* means to provide information in writing or in the primary mode of communication of the individual for whom the notice is intended.
8. *Personally identifiable* means that the data or information in the education records includes:
 - a. the name of the student, the student's parent, or other family member;
 - b. the address of the student;
 - c. a person identifier, such as the student's social security number or a student number;
 - d. a list of personal characteristics which would make the student's identity easily traceable; or
 - e. other information which would make the student's identity easily traceable.

Policies

The following policies have been adopted by the State Board of Education to assure the protection of confidentiality of any personally identifiable data collected or maintained pursuant to the identification and evaluation of children for purposes of placement in special education.

1. **Students' Rights Policy.** The permission or consent required of and the rights accorded to the parents of the student shall be required of and accorded to only the student provided that he/she:
 - a. is married or declared emancipated by the court, or

- b. has attained 18 years of age and has not been legally adjudicated to be an incapacitated person.

Local education agencies should inform parents of students whom they believe to be an incapacitated person to have themselves declared the students' legal guardians before the student turns 18 in order that the parents may continue to have access to the students' records.

34 CFR 300.574

- 2. Notification. Each local education agency shall annually inform parents of students currently enrolled and in attendance at the LEA of:
 - a. their confidentiality rights under FERPA and Part B, EHA; and
 - b. the confidentiality policies and procedures of the agency.

The notice must include a statement that the parent or eligible student has a right to:

- a. inspect and review the student's records;
- b. request the amendment of the student's education records;
- c. refuse to consent to disclosures of personally identifiable information, except to the extent that Federal laws authorize disclosure without consent;
- d. file a complaint with the KSDE or the U.S. Department of Education concerning alleged failures by the LEA to comply with State and Federal confidentiality requirements; and
- e. obtain a copy of the LEAs confidentiality policies and procedures.

The notification shall include information about where copies of the LEAs confidentiality policy may be obtained.

The notice shall be given in the native language(s) of the community population(s) and shall be given by such means as are reasonably likely to inform parents and students of their rights. Means of notification may be by individual notification; publication in the community newspaper; or publication in student or parent handbook, student newspaper, LEA newsletter, superintendent's newsletter, or school newsletters.

34 CFR 99.7

- 3. State Board Responsibilities. The State Board of Education shall give notice which fully informs parents about the policies and procedures which the State will undertake or has undertaken to ensure that all children with disabilities are identified, located, and evaluated and the method used by the State to determine which children are currently receiving needed special education services and which children are not currently receiving special education and related services. The notice shall include the following:
 - a. a description of the extent to which the notice is given in the native languages of the various population groups of the state;

- b. a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- c. a summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- d. a description of all of the rights of parents and children regarding this information, including the rights under Section 438 of General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act [as amended] and implementing regulations).

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

34 CFR 300.561

- 4. Types and Location of Records. A list shall be kept of the types and locations of education records collected, used, and maintained by the local education agency and the titles and addresses of officials responsible for the records. This list shall be made available to parents upon request.

34 CFR 99.6(a)(iv)
34 CFR 300.565

- 5. Access. Parents or their duly authorized representative(s) shall be permitted to inspect and review any personally identifiable data relating to their child without unnecessary delay (no more than forty-five days after the request has been made) and prior to any IEP meeting or any hearing relating to the identification, evaluation, or placement of the student. The agency may presume that the parent has authority to exercise rights unless the agency has been provided with evidence that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce. If both parents have the authority to give consent, either parent may do so; consent of both parents is not required.

Parents shall be provided a response to reasonable requests for explanation or interpretation of data in their child's records. This explanation or interpretation shall be provided by a qualified professional in the parent's native language no more than forty-five days after the request has been made.

34 CFR 99.4
34 CFR 99.10
34 CFR 300.562

K.A.R. 91-12-44(d)

- 6. Records Containing Data on More Than One Student. If any record includes data on more than one student, parents shall inspect and review only data relating to their child. If this is not feasible, parents must be informed of the data specific to their child.

34 CFR 300.564

7. Right to Copies of Records. Parents may request copies of their child's records. No charge shall be made to parents to search for or to retrieve data. The agency may charge a fee for copies of records which are made if the fee does not effectively prevent parents from exercising their right to inspect and review those records. The LEA may not charge a fee to search for or to retrieve a student's records.

Copies of records, files, documents, and other materials including summary results of testing, evaluation, or observations of the student shall be made available to parents. Materials protected by copyright, (such as individual test protocols), and those for which dissemination will destroy their value, shall NOT be copied or transmitted in whole or in part. If a parent requests to examine the answers to test questions he/she may be allowed to read the questions and the answers given by the student if this is done in the presence of a representative of the agency that administered the test. Copies of such material shall not be provided.

34 CFR 99.11
34 CFR 300.562
34 CFR 300.566

8. Record of Access. Each education agency shall maintain a record of all persons obtaining access to a student's education records excluding parents and authorized employees of the agency. The record shall include the name(s) of the person(s) obtaining access, the date access was given, and the purpose for which the person(s) was authorized to use the records.

34 CFR 99.32
34 CFR 300.563

9. Amendment of Records. Parents may request amendments to records which they believe to be inaccurate, misleading, or in violation of the privacy or other rights of the student. Within ten days after receipt of such a request, the agency shall determine whether the records will be amended as requested. Parents shall be advised in writing or by their normal mode of communication of the agency's decision to refuse the requested amendment and of their right to a hearing in order to challenge the data. Within ten days after receiving notice of the agency's refusal to make the requested amendment, parents may make a written request for a hearing to challenge the data.

If the agency agrees to amend the records, the amendments shall be completed within thirty days of the original request.

34 CFR 99.20
34 CFR 300.567

10. Hearing to Challenge Content of Records. The agency shall, on request, provide an opportunity for a hearing to challenge information in education records. Any such hearing shall be held within thirty days after the request. At least five days prior to the hearing, parents shall be notified in writing, the time and place of the hearing which shall be at a time and place reasonably convenient to the parents.

The hearing shall be impartial, that is, conducted by a person who does not have a direct interest in its outcome. This person may be an official of the educational agency. Parents may

present evidence relevant to the issues and may be assisted or represented by individuals of their choice (including an attorney) at their own expense.

Parents shall be notified in writing of the hearing decision within ten days following the hearing. This decision shall be based solely upon the evidence presented at the hearing. The notice shall include a summary of the evidence and the reasons for the decision.

34 CFR 99.22
34 CFR 300.568
34 CFR 300.570

11. Actions Following the Hearing. If, as a result of the hearing, the agency decides that the record should be amended as requested, it shall notify the parent in writing of its decision and so amend the record. If the agency decides not to amend the record, it shall, within ten days, inform the parents in writing or their normal mode of communication of their right to enter into the records, a statement about the challenged data which gives their reasons for disagreeing with the decision of the agency. This statement shall be maintained in, and treated as part of, the student's records as long as the records or the contested portion thereof is maintained by the agency. If the records of the student or the contested portion is released, transferred, or otherwise disclosed by the agency to any party, the parent's statement shall also be released, transferred, or disclosed.

34 CFR 99.21
34 CFR 300.568
34 CFR 300.569

12. Consent for Disclosure. Each education agency shall obtain the written consent of the parent before disclosing personally identifiable information from the education records of the student, other than directory information and as provided in policy statement 13 below. The written consent must be signed and dated by the parent or the eligible student giving the consent and shall include the following:

- a. a specification of the records to be disclosed,
- b. the purpose(s) of the disclosure, and
- c. the party or parties to whom the disclosure may be made.

34 CFR 300.572

13. Conditions Under Which Consent for Disclosure is Not Required. An education agency may disclose personally identifiable information from an education record of a student without parental consent to:

- a. school officials, including teachers, within the agency whom the agency has determined to have a legitimate educational interest;
- b. officials of another school in which the student seeks or intends to enroll. The agency transferring the records shall make an attempt to notify the parents of the transfer of records at the parent's last known address; except

- (1) when the transfer of the records is initiated by the parent at the sending agency or institution; or
 - (2) when the agency or institution includes a notice in its policies and procedures that it forwards education records on request to a school in which a student seeks or intends to enroll;
 - (3) when an exceptional student is enrolled in more than one school or receives services from more than one school. These schools may disclose information from the education records of the student to each other, provided that the disclosure meets the requirements of this section;
- c. representatives of local, State, or Federal education authorities in connection with an audit or evaluation of Federal and State supported education programs or for the enforcement of compliance with Federal legal requirements;
 - d. comply with a judicial order or lawfully issued subpoena. Note: In this case, the agency shall make a reasonable effort to notify the parent in advance of compliance with the order or subpoena. No local education agency shall allow access to, or provide copies of, confidential student records to a law enforcement officer or staff of the Department of Social and Rehabilitation Services without a court order.

The LEA shall provide the parents, upon request, with a copy of any education records which have been disclosed.

34 CFR 99.31
 34 CFR 99.35
 34 CFR 300.571

14. Safeguards. Each participating agency shall implement procedures that assure:
- a. the protection of confidentiality of data at collection, storage, disclosure, and destruction stages;
 - b. one official is designated by the agency to be responsible for assuring the confidentiality of any personally identifiable data;
 - c. provision is made for instruction or training for all personnel collecting or using personally identifiable data regarding relevant Federal laws and regulations and State policies and procedures; and
 - d. a current listing of the names and positions of agency personnel who may have access to personally identifiable data is maintained for public inspection.

34 CFR 300.572

15. Destruction of Records. Each parent shall be contacted when personally identifiable information is no longer needed to provide educational services to the student and be informed of his or her right to request that the information be destroyed. If the lawful custodian or custodians request that the information be destroyed, the agency shall comply. However, a permanent record of the student's name, address, and telephone number and of

his or her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.

When informing parents about their rights in regard to the destruction of personally identifiable information, the agency should remind them that the records may be needed by the student for social security benefits or other purposes.

In the event that the local education agency is unable to contact a parent at the last known address, the agency shall document its efforts. Records should be kept for a period of not less than five years prior to any attempt by the educational agency to destroy the records.

34 CFR 300.573

XII

PROCEDURAL DUE PROCESS

Introduction

The rights of a student in regard to special education actions are guaranteed in Kansas laws, rules, and regulations. Lawful custodians and/or the student must be given a complete and clear explanation of any school action which proposes to initiate, refuse, or change special education services. They also have the opportunity to participate in decisions made during evaluation and placement procedures toward the end of reaching consensus as to the appropriate educational program for the student. Procedural due process begins when a lawful custodian, student, or local education agency requests the initiation of a comprehensive evaluation to determine the student's eligibility for special education services. Ideally, the school and the home will work closely together, and both will be in agreement about the course of action most beneficial for the student. If there are differences between the school and the home, every attempt should be made by both parties to resolve these differences through conferences, negotiations, or mediation. Only if the differences are irreconcilable, should the legal remedy of due process hearing and appeal procedures be invoked. Any parent and/or lawful custodian of a special education child in Kansas may request a due process hearing. Such a request may be made whenever a local education agency (LEA) proposes or refuses to initiate or change the identification, evaluation, or educational placement of a special education child or the provision of a free, appropriate public education to the child. The LEA may also request a due process hearing whenever a parent or lawful custodian withholds consent for a preplacement evaluation or initial placement in special education. A due process hearing typically involves instances with only one child. There is no provision for procedural due process on a class action basis.

Definitions

1. *Mediation* means an informal process by which the participants, together with the assistance of a mutually agreed-upon neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensus settlement that will accommodate their child's educational needs.
2. *Negotiation* means an informal process in which the participants attempt to decide issues on their merits, rather than through argument, and reach a mutually acceptable agreement that will accommodate their child's educational needs. Negotiation differs from mediation in that no trained third party facilitator is used.
3. *Public expense* means paid or otherwise provided by a local education agency with no cost to the parent other than fees or charges which are charged to all students, such as textbook rental, school lunch, laboratory fees, or student trips. The local education agency either pays for the full cost of services or ensures that the services are provided.

Policies

1. LEA Guarantee of Student Rights. Each LEA shall guarantee the rights of a student and adopt special education due process procedures which are in compliance with requirements of

K.S.A. 72-972 to 72-975 and shall guarantee the rights of a student in regard to special education actions required by Kansas laws, rules and regulations.

- a. A copy of the due process procedures must be on file with the Kansas State Department of Education as a part of the local comprehensive plan for special education.
- b. Member districts of a special education cooperative or interlocal agreements may jointly draft a set of due process policies, subject to adoption by the board of education of each member district. Member districts in a special education cooperative are individually responsible for implementing due process procedures, including conducting any hearing requested by a resident parent/child. Interlocal units duly authorized under K.S.A. 72-8230 have the same rights and responsibilities as a local school district in implementing due process procedures and may conduct hearings for member districts.
- c. The State Board of Education shall adopt due process proceedings for the Kansas State School for the Visually Handicapped and the Kansas State School for the Deaf, and the Secretary of Social and Rehabilitation Services shall adopt special education due process proceedings for other State institutions.

34 CFR 300.502
through 300.513

K.S.A. 38-1513a
K.S.A. 72-972 through 72-975
K.A.R. 91-12-40
K.A.R. 91-12-44(b) through 91-12-48

2. Determination of Lawful Custodian. When the parent, other caregiver, or guardian is unknown or unavailable, a lawful custodian must be appointed before any special education action is taken by the local education agency on behalf of the child. The person determined to be the lawful custodian has all of the rights guaranteed to children and parents under K.S.A. 72-972 to 72-975 inclusive. Each local education agency shall:
 - a. attempt to determine who is the lawful custodian of the child; and
 - b. if the lawful custodian of the child cannot be determined or cannot be found, cause proper proceedings to be instituted pursuant to the Kansas Code for Care of Children, to determine whether the child is in need of care.
3. Children's Rights Policy
 - a. If action is proposed in regard to any person who is 18 years of age or older and the person has not been legally adjudicated to be an incapacitated person, due process shall be granted only to that person.
 - b. If the student is a minor who is married, due process shall be granted the student.
4. Parental Notification. Prior to taking any special education action, the local education agency is required to notify each child, or his or her parents. The notification must be given in writing by mail or personal delivery. The notice must be written in language understandable to the general public and provided in the primary language of the home. If the native language or other mode of communication of the home is not a written language, the notice shall be orally translated into the primary language or other mode of communication of the home. Steps shall be taken to ensure that the parent/child understands the content of the notice. For

example, parents may be asked to sign a written statement of understanding of rights. If the lawful custodian of the child is the secretary of Social and Rehabilitation Services, notify the appropriate area office of the department of Social and Rehabilitation Services.

K.A.R. 91-12-40(d)(1)(A)

K.A.R. 91-12-44 through 91-12-48

5. Written Notice. No special education action may be taken until the local education agency has mailed or personally delivered written notice:

- (1) *Describing the proposed action and stating the reasons the action is deemed appropriate for the child. Evaluation procedures, tests, records, or reports upon which the action is based shall be included. This description shall state the options that were considered by the local education agency and the reasons for rejecting those options which are not proposed for the child;*
- (2) *advising the parent of the right to consent or object, in writing, upon forms provided by the local education agency, to any proposed action;*
- (3) *advising the parent of the rights regarding procedural due process, including the right to a hearing;*
- (4) *informing the parent that, if written consent is not given, the local education agency, on its own initiative, may request a due process hearing;*
- (5) *informing the parent of any free or low cost legal services or other relevant services in the area;*
- (6) *advising the parent of the right to have access to school reports, files, and records related to the proposed action; and*
- (7) *advising the parent that the child will remain in the present education placement until a decision is made following a due process hearing or until the proposed educational action is consented to, in writing, by the parent (K.A.R. 91-12-46(a)). If the action involves admission of a child to public school, parents must be advised that the child, with the consent of his/her parent, will be placed in a public school program pending completion of all proceedings.*

K.A.R. 91-12-46 through 91-12-48

6. KSDE Toll-Free WATS. Parents also must be informed that, if they desire further information related to special education rights and procedures, the KSDE maintains a toll-free number (1-800-332-6262) which they may call. This program, known as "Make a Difference," provides assistance and resource materials to any persons or agencies and is especially helpful if there is a need for conflict resolution prior to more formal due process hearing procedures.
7. Comprehensive Evaluation. Prior to the initial placement of an exceptional child in a special education program, a comprehensive evaluation shall be conducted in accordance with the requirements of K.A.R. 91-12-40. When a child is referred for a comprehensive evaluation,

the parents shall be notified as specified in number 5 on previous page and given the opportunity for a personal conference concerning the reason for referral prior to the implementation of the evaluation. In addition to the requirements listed in number 5 on the previous page, the prior notice shall: *Include a clear description of proposed evaluation procedures, including the kinds of tests used and the estimated duration of the evaluation procedure. . . indicate the opportunity to obtain an independent evaluation of the child.*

K.A.R. 91-12-45(a)(6)

K.A.R. 91-12-46(a)(1)

8. Parental Consent Time Lines. *If the parent of the child gives written consent for the proposed action, it may be initiated immediately. If written consent is not given, action shall not be taken within a period of 30 days. This period shall be for the purpose of affording the parent an opportunity to indicate the parent's objections to the proposed action. If, after the 30 day waiting period, the parent has not given consent to the proposed action, the local education agency shall attempt to meet with the parent and explain the need for the proposed action and answer questions of the parent. If the parent still refuses to consent to the proposed action, the local education agency shall either accept the decision, or initiate a due process hearing in regard to the matter. Records of contacts and consultations with the parent shall be maintained by the local education agency.*

K.A.R. 91-12-45(b)

9. IEP Development. Each LEA shall ensure an IEP be developed prior to placement in any special education program. (This requirement shall preclude the temporarily placing of an exceptional student in a special education program as part of the evaluation process before the IEP is finalized.)

K.A.R. 91-12-41 through 91-12-42

10. Placement. Prior to the initiation or change of special education programming for a child, the child in question and/or his/her parents shall be given written prior notice as has been specified.

If the parent of the child gives written consent for the proposed action, it may be initiated immediately. If written consent is not given, action shall not be taken within a period of 30 days. This period shall be for the purpose of affording the parent an opportunity to indicate the parent's objections to the proposed action. If, after the 30 day waiting period, the parent has not given written consent to the proposed action, the local education agency shall attempt to meet with the parent and explain the need for the proposed action and answer questions of the parent. If the parent still refuses to consent to the proposed action, the local education agency shall either accept the decision, if it reconsiders and determines the decision will not result in a denial of a free, appropriate public education, or initiate a due process hearing in regard to the matter. Records of contacts and consultations with the parent shall be maintained by the local education agency.

K.A.R. 91-12-46(b)

11. Parental Right to Obtain an Independent Evaluation. Parents must be advised of their right to an independent educational evaluation. This requirement also is set forth in Kansas regulations as follows:

Each local education agency shall provide to parents, on request and when a notification of proposed action is given, information about where an independent evaluation may be obtained.

(1) *Right to evaluation at public expense.*

(A) *An independent educational evaluation shall be provided at public expense if the parent disagrees with the evaluation by the local education agency, unless the local education agency initiates a due process hearing to show that its evaluation is appropriate. If the final decision is that the school's evaluation is appropriate, the parent still has a right to an independent evaluation, but its expense shall not be required to be borne by the school. The results of the independent evaluation, however, shall be considered by the local education agency or any hearing officer, or both, in decisions made with respect to the provision of a free appropriate public education for that child.*

(B) *Whenever an independent evaluation is provided at public expense, the criteria under which the evaluation is obtained must be the same as the criteria which the local education agency uses when it initiates an evaluation. The credentials of the independent evaluator or evaluators shall be at least comparable to the credentials of the local education agency's evaluators. The local education agency shall not be responsible for the costs of unreasonably expensive independent evaluations when comparable evaluations can be obtained at a lesser cost.*

(2) *If any hearing officer requests an independent educational evaluation as a part of a hearing, the cost of the evaluation shall be at public expense.*

34 CFR 300.503

K.A.R. 91-12-45(c)

12. Independent Evaluation at Private Expense. If the parent obtains an independent evaluation at private expense, the results of the evaluation:

- a. must be considered by the local education agency in any decision made with respect to the provision of a free, appropriate public education to the child, and
- b. may be presented at any special education due process hearing or review.

13. Alternatives to Due Process Hearings. The intent of State and Federal special education due process requirements is to protect children from thoughtless or capricious actions by schools or by parents. Usually parents and school personnel assume their proper responsibilities in regard to the education of children and have little or no difficulty in reaching mutual agreement about the initiation, continuation, or termination of special education services.

The statutory provisions of prior notice to parents, multidisciplinary evaluation and staffing, the IEP conference, and informed parental consent should be regarded as measures which enhance communication between the home and school and prevent misunderstandings or conflicts. All of the parent-school contacts required prior to a special education placement can be used by the school to discover parental concerns and to deal humanistically with these concerns. The school can explain clearly and honestly the child learning problems, the proposed special education interventions, and the anticipated benefits for the child. Both parties should be open to exploration of alternatives which will benefit the child.

14. Informal Prehearing Procedures. The following procedures are recommended as additional steps which may be taken by the school to prevent conflict situations requiring resolution through a due process hearing:
- a. inservice for administrators, teachers, and support staff on communication skills and conferring with parents of exceptional children;
 - b. public dissemination of information on local special education services and parent/child rights;
 - c. informal mediation or conflict resolution procedures to precede any scheduled due process hearing or formal prehearing activity;
 - d. meetings or workshops for parents and other persons in the community.
15. Mediation and Negotiation. The processes of mediation and negotiation are not required by an LEA, however, they may wish to suggest the use of mediation. Mediation may not be used to deny or delay a parent's rights to a due process hearing.

34 CFR 300.506 (Comment)

16. Local Education Agency Due Process Hearing. If there are irreconcilable differences between parents and the local education agency as to the appropriateness of a proposed special education action, both parties are afforded an opportunity for resolution through an impartial due process hearing. A due process hearing may be initiated by any parent whenever a district proposes or refuses to initiate or change the identification of a child; the evaluation of a child; the educational placement of a child; or to initiate or change the provision of a free, appropriate public education for the child. A local educational agency may initiate a hearing any time a parent refuses consent for a preplacement evaluation or for a special education placement.

34 CFR 300.506

K.A.R. 91-12-44(c)

17. Agency Responsible for the Hearing. The district in which the child lives, whether the child lives with parent or the result of placement by district court or SRS, State institution if the child has been admitted to the institution, private institution if the child has not been placed by the LEA where the child lives, or State school (KSSVH and KSSD), is the agency responsible for the hearing. The hearing must be conducted by the LEA directly responsible for the education of the child.

34 CFR 300.506(b)

K.S.A. 72-972(a)

K.A.R. 91-12-47(a)

18. Request for Hearing. The request for a due process hearing shall be made in writing to the local board of education, the State Board, or the secretary of Social and Rehabilitation Services, as appropriate. If a request for a due process hearing is received, the statutory provisions in Article 9 of Chapter 72 of Kansas Statutes annotated shall become operative and shall be followed.
- a. Parent Initiated Hearing. Parents may request a hearing which must be held within thirty days from the date on which the request is received by the local education agency. The

request for a hearing should be made in writing to the board of the local education agency. Upon receipt of such a request, the board shall appoint an impartial hearing officer(s).

- b. Local Education Agency Initiated Hearing. If the local education agency requests a hearing, the hearing shall take place within thirty days from the date on which written notice of the hearing has been received by the parents. Said notification shall not be sent to the parent prior to (1) the local education agency's receipt from the parent of written objection to the special education action in question, or (2) the elapse of the thirty day response period which is granted to the parent in regard to the proposed special education action in question, in the instance where the parent fails to consent or object to said special education action.

K.S.A. 72-972(a) and (d)
K.A.R. 91-12-47(a)

19. Free or Low-Cost Legal Assistance. Each LEA shall inform parents of any free or low-cost legal and any other relevant services available in the area if the parent requests the information and/or the parent or the LEA initiates the hearing.

34 CFR 300.506(c) K.S.A. 72-973
K.A.R. 91-12-46(a)(5)

20. Hearing Officer List. Each local education agency shall maintain a current list of due process hearing officers as a part of their local comprehensive plan or local comprehensive plan update. Such list shall include a statement of the qualifications of each hearing officer. The local education agency should not incorporate the entire State approved list of hearing officers into their own list of hearing officers. Only the names of those approved hearing officers who have been personally contacted and who have consented to serve as a hearing officer for the local education agency should be included on the list of approved hearing officers contained in the local comprehensive plan.

34 CFR 500.507(c) K.A.R. 91-12-69(a)

21. Hearing Officer Qualifications. Subject to the provisions of K.S.A. 1983 Supp. 72-973a, the local education agency shall appoint a hearing officer for the purpose of conducting the local due process hearing. A qualified due process hearing officer is a person who meets the following requirements:

- a. is not an employee of the LEA responsible for the education or care of the child,
- b. does not have a personal or professional interest which would conflict with his or her objectivity,
- c. has successfully completed a Kansas State Department of Education (KSDE) conducted or approved due process hearing officer training program, and
- d. has agreed to serve as a due process hearing officer and is listed on the KSDE approved due process hearing officer list.

In addition, K.A.R. 91-12-68 states --

- (a) *The state board and each local education agency shall compile and maintain a list of qualified hearing officers who have completed a state agency conducted or approved training program.*
 - (b) *A qualified hearing officer shall be able to:*
 - (1) *demonstrate, by passing a written test with a score of 80 percent or higher, general knowledge of special education programs and procedures;*
 - (2) *demonstrate, by passing a written test with a score of 80 percent or higher, knowledge of the laws, rules and regulations, requirements and guidelines related to conducting a due process hearing; and*
 - (3) *demonstrate, by passing a written test or simulation exercise with a score of 80 percent or higher, the ability to plan and conduct a due process hearing.*
22. Hearing Officer Training Programs. *Any person or institution may apply for approval of a training program. The state board shall notify each applicant of the approval or disapproval of the application. Each application shall be approved or disapproved upon the basis of an evaluation of the following factors:*
- (1) *whether the program provides a minimum of 16 clock hours of instruction in program content and testing of trainee performance;*
 - (2) *whether the program contains a minimum of four clock hours of instruction each from those areas described in paragraphs (1), (2), and (3) of subsection (b) of this regulation;*
 - (3) *the manner in which the content is to be taught and the written or simulation tests used to determine if program trainees meet or exceed a score of 80 percent on the content;*
 - (4) *verification that instructional staff members have completed an approved training program, have served as hearing officers, or are otherwise qualified by training or experience to provide instruction in program content; and*
 - (5) *the process used to send the names of trainees who meet the standards of paragraph (b) of this regulation to the state board.*

K.A.R. 91-12-68(c)

23. Local Education Agency Appointment of Hearing Officer. *Requires the following provisions be met when a local education agency appoints a hearing officer: (a) Not more than three days after a hearing has been requested under the provisions of K.S.A. 72-972 and any amendments thereto, the agency providing for the hearing shall furnish to the lawful custodian of the involved child:*
- (1) *A list of the agency's prospective hearing officers;*

- (2) *written notification that the lawful custodian has the right to request disqualification of any or all of the hearing officers on the list and to request the state board to appoint a hearing officer under the procedures prescribed in K.S.A. 1983 Supp. 72-973a, and any amendments thereto, and this rule and regulation; and*
- (3) *written notification that the lawful custodian has five days from the date of receiving the list of hearing officers to advise the agency of any officer whom the lawful custodian wishes to disqualify.*

K.S.A. 72-973(c)
K.A.R. 91-12-69(a)

24. Computing of Time Period. Those provisions, as specified in K.S.A. 60-206 state that,

- (a) *In computing any period of time...the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. 'Legal holiday' includes any day designated as a holiday by the congress of the United States, or by the legislature of this state.*

K.S.A. 60-206

25. Parental Disqualification of Hearing Officers. If the parent wishes to disqualify any or all of the hearing officers on the list provided by the LEA, the parent shall notify the LEA of the person(s) he or she wishes to disqualify. Each LEA may then appoint any person not disqualified from the list.

If all of the hearing officers are disqualified the LEA shall, within three days of receiving notification of disqualification, submit a written request to the State Board of Education for a list of the names and qualifications of five hearing officers. The request shall also state the names of the disqualified hearing officers.

Not more than three days after receiving written request from an LEA for a list of hearing officers, the State Board shall provide a list of five prospective hearing officers and their qualifications. The list shall not include any of the previously disqualified hearing officers.

K.S.A. 72-973a
K.A.R. 91-12-69(b), (c) & (d)

26. State Board Appointment of Hearing Officers. When the LEA receives the list provided by the State Board, the LEA shall arrange a meeting or phone call with the parent to establish which name or names each party wants removed from the list.

- a. Each party may request removal of two names.
- b. Not more than seven days after receiving the State Board list, the LEA shall submit to the State Board the name of any hearing officer(s) not removed from the list.

- c. The State Board shall appoint a hearing officer from the list within three days after receiving the list from the LEA.

K.S.A. 72-973a

K.A.R. 91-12-69(e) & (f)

27. Hearing Rights. The hearing rights of both parties are to:

- a. be accompanied and advised by counsel and/or individuals with special knowledge;
- b. present evidence and confront, cross-examine, and compel the attendance of witness;
- c. prohibit the introduction of any evidence at that hearing that has not been disclosed to that party at least five days before the hearing;
- d. obtain a written or electronic verbatim record of the hearing;
- e. obtain written findings of fact and decisions (the public agency shall transmit those findings and decisions, after deleting any personally identifiable information to the State Special Education Advisory Council);
- f. parents involved in hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public;
- g. have the hearing and each review involving oral arguments conducted at a time and place which is reasonably convenient to the parents and child involved; and
- h. receive a final decision not later than forty-five days after the public agency's receipt of a request for a hearing, unless the hearing officer grants a specific extension of time at the request of either party.

34 CFR 300.508

34 CFR 300.512

K.S.A. 72-973 & 72-975

K.A.R. 91-12-47

28. Decision of the Hearing Officer. The hearing officer shall render a decision within ten days after the conclusion of the hearing. This decision shall be based solely on the evidence presented at the hearing. A copy of the decision:

- a. shall be sent, by restricted mail, to each of the parties or to their representatives within twenty-four hours after the decision is rendered; and
- b. after deletion of all personally identifiable information, shall be sent to the State Advisory Council for Special Education.

K.A.R. 91-12-47(d)

29. Finality of Decision. A decision made in a hearing conducted under this action is final unless the LEA or parent appeals the hearing decision of the local hearing officer in writing to the State Board of Education within ten calendar days of receiving the written decision. If a decision is appealed, the State Board shall appoint a hearing officer who, within twenty days after the notice of appeal is filed, shall:

- a. examine all information;
- b. determine if appropriate procedures were followed;
- c. seek additional evidence if necessary;
- d. afford the parties the opportunity to present oral or written argument, or both, at the discretion of the hearing officer;
- e. reach a decision not less than five days after the completion of the review;
- f. send written notice of the decision to each of the parties; and
- g. grant specific extensions of time beyond the twenty days at the request of either party.

The written decision shall be based solely on evidence and arguments presented during the review and shall be accompanied by a statement that the decision may be appealed to district court.

34 CFR 300.509
34 CFR 300.510

K.S.A. 72-974

Procedures

1. Local Comprehensive Plan Contents. The local comprehensive plan must contain local procedural due process policies and procedures governing notification of proposed special education action, lawful custodial consent for proposed special education action, lawful custodial right to obtain an independent evaluation, and the individualized education program. Note: LEAs are advised, upon the initiation of a due process hearing, to consider requesting an extension of time. Otherwise, all parties will be held to the required forty-five day time line.
2. LEA Records. Each LEA should keep records to document that procedural due process requirements have been followed. It is recommended that the LEA develop a checklist to facilitate the tracking of special education actions and events for each student.
3. List of Hearing Officers. Each LEA shall maintain a list of three to five State approved due process hearing officers who have agreed to serve as the LEAs hearing officers. The list must also include a brief statement of the qualifications of each of the hearing officers. Note: LEAs are advised not to include more than five names on their list because of the right of the parent to disqualify all hearing officers on the LEA list.
4. Finality of Decision. A decision made in a hearing conducted under this action is final unless the LEA or parent appeals the hearing decision of the local hearing officer in writing to the State Board of Education. If a decision is appealed, the State Board shall appoint a hearing officer who shall:
 - a. examine all information;
 - b. determine if appropriate procedures were followed;

- c. seek additional evidence if necessary; and
- d. afford the parties the opportunity to present their argument.

XIII

PARTICIPATION OF PRIVATE SCHOOL STUDENTS

Definitions

1. *Denominational or parochial school* means a private school maintained by a religious body.
2. *Private school* means an organization which regularly offers education which is exempt from Federal income taxation under Section 501 of the Federal internal revenue code and attendance at which satisfies the compulsory school attendance laws of Kansas (K.S.A. 72-5392).

Policies

1. LEA Responsibility. K.S.A. 72-5393 and K.A.R. 91-12-39 set forth the responsibility of school districts for exceptional children enrolled in private schools. The special education services required by State statute and regulation must be provided to *all* children of school age. Therefore, school districts must make available to private school students the following services:
 - a. screening and identification services;
 - b. appropriate special education services, as specified in an individualized education program;
 - c. transportation to special education services when necessary; and
 - d. procedural due process.
2. Requirements for Provision of Services by LEA. The services provided to private school students must be comparable in quality, scope, and opportunity for participation to the services provided for public school students. However, if the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, the local education agency must provide different services appropriate to individual needs. Special education services may be provided to private school students through such arrangements as dual enrollment or mobile equipment. Public school personnel may also be assigned to serve in private schools that are not denominational or parochial. Only screening and diagnostic services to identify exceptional children may be provided by public school personnel on the premises of any denominational or parochial school.
3. Dual Enrollment. Any exceptional student dually enrolled in a private school and public school on September 15 may be included in the public school's enrollment in calculating that school's entitlement under the School District Equalization Act. Students may be counted for any portion of a full-time equivalency (FTE) enrollment.
4. December 1 Count. All private school handicapped students receiving special education services as specified in a current individualized educational program should be included in a district's December 1 head count for funding under Part B, Education of the Handicapped Act.

5. Transportation Reimbursement. State special education reimbursement may be claimed for costs incurred in transporting exceptional private school students to public school special education programs.
6. Use of Public Funds. K.A.R. 91-12-39 places the following restrictions on the use of State and Federal funds for the education of exceptional children enrolled in private schools. Each local education agency shall:

- (1) *Maintain administrative control and direction over special education services and related services provided by the local education agency to exceptional children attending private schools. In exercising administrative control, records and accounts for equipment shall be kept to ensure that equipment is used solely for the purposes of the specified program or project;*
- (2) *ensure that state and federal funds for services to exceptional children in private schools are not used to pay the salaries of private school personnel; and*
- (3) *ensure that state and federal funds are not used either to construct private school facilities or to purchase equipment for private schools.*

State and Federal funds must be used to meet specific needs of exceptional students enrolled in a private school rather than the needs of the private school or general needs of the students enrolled in a private school. A local education agency may not use State or Federal funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. State and Federal funds for services for exceptional students may not be used for any salaries of private school personnel. However, payment may be made for contracted services of such personnel outside their hours of duty when the employee performs the services under public supervision and control.

7. Requirements for Participation in Federal Projects. As a condition of eligibility for receiving Federal funds administered by the State Department of Education for the education of exceptional students, each local education agency shall:

- a. Provide students enrolled in private schools with genuine opportunity for equitable participation. Applicants for funds shall consult with appropriate private school personnel:
 - (1) during all phases of the development and design of the project covered by the application, including consideration of which students will receive benefits, what benefits will be provided, how these benefits will be provided, and how the project will be evaluated; and
 - (2) before making any decision that affects the opportunities of students enrolled in private schools to benefit from the project.

These representatives shall be provided a genuine opportunity to express their views regarding the above listed subject matter.

- b. Determine the needs of students enrolled in private schools, the number of those students who will participate in the project, and the benefits to be provided these students. This determination shall be made on a basis comparable to that used by the applicant to determine the participation of public school students.

- c. Assure the expenditure of the same average amount of Federal funds on a student enrolled in a private school who receives benefits under the program and a student enrolled in a public school who receives benefits under the program. A different average amount may be expended on private school students benefiting from the program if the average cost of meeting their needs is different from the average cost of meeting the needs of public school students.
- d. Provide that project and programs carried out at public expense do not separate children on the basis of school enrollment or religious affiliation.
- e. Maintain continuing administrative control over funds and property that benefit students enrolled in a private school. A local education agency must keep title to and exercise administrative control of all equipment and supplies placed or used in a private school. The local education agency must ensure that any equipment or supplies purchased with Federal funds and placed in a private school are used only for the purpose of the Federal project and can be removed from the private school without remodeling. Such supplies and equipment shall be removed from the private school when no longer needed for purposes of the project. Removal is also required to avoid use of the equipment or supplies for other than project purposes.
- f. Include the following information in its application:
 - (1) a description of how the applicant will meet the Federal requirements for participation of students enrolled in private school (45 C.F.R. 76.651-662);
 - (2) the number of students enrolled in private schools who have been identified as eligible to benefit under the program;
 - (3) the number of students enrolled in private schools who will receive benefits under the program;
 - (4) the basis the applicant used in selecting the students;
 - (5) the manner and extent to which the applicant complied with the requirements for involvement of appropriate private school personnel in planning and implementing the project;
 - (6) the places and times that the students will receive benefits under the program; and
 - (7) the differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.
- g. Assure that special education classes are not organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and/or the classes include both private school and public school students.
- h. Assure that program funds are not used for the construction of private school facilities.

Procedures

- 1. LEA Policies. Each LEA should:
 - a. develop policies and procedures which, at a minimum, address

- (1) the respective roles and responsibilities of public and private school personnel for referral, student education, communication with parents, and procedural due process; and
 - (2) methods by which services will be provided; e.g., transportation of students to public school campuses or the provision of mobile facilities;
- b. annually give written notification to the private schools of:
- (1) the special education and related services available through the LEA; and
 - (2) procedures for the participation of private school students who are eligible for these services.
2. Audit Records. The LEA must be able to document that State and Federal special education funds have not been used to finance the existing level of instruction in a private school or to otherwise benefit the private school. Separate accounts are not necessary but audit records should be kept for these funds showing how they were expended.
3. Student Records. The IEPs and records of private school students receiving special education and related services should be on file with the LEA to document compliance with State and Federal requirements as specified in this plan.
4. Federal Project Records. In order to document that private school personnel have been consulted when a Part B, EHA project is being planned and that students enrolled in private schools have genuine opportunity for equitable participation in the project, applicants should keep records which include:
- a. minutes of meetings and telephone logs of conversations with private school personnel and/or parents of students enrolled in private schools; and
 - b. copies of relevant correspondence.

XIV

PLACEMENT OF EXCEPTIONAL STUDENTS IN PRIVATE SCHOOLS

Introduction

The State Board of Education has promulgated regulations and established procedures to ensure that each exceptional child who is placed by a public agency in a private school is provided special education and related services which meet State Board standards, are delivered in conformance with the child's individualized education program, and are provided at no cost to parents. The State Department of Education accredits or approves private special purpose schools and youth center schools, and contracts for services between public agencies and accredited private programs.

Policies

1. Accreditation/Approval of Out-of-State Special Purpose Schools. Out-of-state schools must be accredited or approved to provide special education services by the state in which they are located. The curriculum must meet criteria set by the Special Education Administration Section and approved by the State Board. Such approval must be obtained each year.
2. Accreditation of Special Purpose Schools. Each school, in order to be designated as a special purpose school, must submit annually a comprehensive plan of operation which meets the provisions of the Special Education for Exceptional Children Act, Article 12 of Kansas Administrative Regulations, as well as the standards of the State Board of Education as set forth in the Kansas State Plan for Special Education.

S.B.R. 91-33-1 *et seq.*

3. Accreditation of Youth Center Schools. Each school, in order to be designated as a youth center school, must submit annually a comprehensive plan of operation which meets the provisions of the Special Education for Exceptional Children Act, Article 12 of Kansas Administrative Regulations, as well as the standards of the State Board of Education as set forth in the Kansas State Plan for Special Education.

S.B.R. 91-34-1 *et seq.*

4. Approval of Developmental Special Preschools. Procedures for the approval of developmental special preschools are prescribed in Article 12 as follows:
 - (a) *Requests for approval as a developmental special preschool shall be submitted to the special education administration section.*
 - (b) *To be approved, a developmental special preschool shall:*
 - (1) *Meet the general criteria for state approval and the standards for early childhood handicapped services; and*
 - (2) *be licensed by the Kansas state department of health and environment as a child care center.*

- (c) *Each developmental special preschool shall obtain Kansas state department of education approval before applying for federal education funds or entering into contracts or agreements with local education agencies.*

K.A.R. 91-12-27

5. Contracts Between LEAs and Private Schools. *Kansas statute requires the board of education of every school district to make a free and appropriate public education available to all exceptional children in the school district. In order to comply with this requirement, districts are authorized to contract with any accredited private nonprofit corporation or any public or private institution within or without the state which has proper special education services for exceptional children.*

K.S.A. 72-967(a)(5)

6. Placement by Court Order. *If any child is placed in a school district or state institution by court order, and the child is determined by the receiving agency to be exceptional, the receiving agency shall be responsible for developing and implementing an IEP for the child. If an exceptional child from a public school program is admitted to a state institution and the child has an IEP, the IEP shall be forwarded to the state institution for implementation and revision, as needed. Conversely, if it is determined by a state institution that an exceptional child shall be returned to the community, the receiving district shall be responsible for implementation and revision of the IEP of the child. Note: All State institutions operate special purpose schools or youth center schools.*

K.A.R. 91-12-41

7. Students Placed in Private Schools by Parents. *If any exceptional child is offered free and appropriate special education services by the local education agency responsible for providing these services to the child, but the child's parent places the child in a private school, the parent shall assume full financial responsibility for the child's education. If a parent contends that the parent has been forced to seek and bear the cost of private schooling for any exceptional child because the responsible local education agency does not offer an appropriate special education service, and the local education agency disagrees with this contention, due process procedures may be implemented to resolve the disagreement and the question of fiscal responsibility.*

If any exceptional child is enrolled in a parochial or other private school and receives special education services from a public education agency, that public agency shall:

- a. *initiate and conduct conferences to develop, review, or revise an individualized education program for the child; and*
- b. *ensure that a representative of the parochial or other private school attends each individualized education program conference. If the representative cannot attend, other methods to ensure participation shall be used, such as individual or conference telephone calls.*

K.A.R. 91-12-41

K.A.R. 91-12-49

Procedures

1. Accreditation of Special Purpose Schools In-State. Representatives from nonpublic schools have the opportunity to provide input in the development of the Kansas State Plan for Special Education, as well as State Board and Kansas Administrative Regulations affecting private schools. These documents are routinely furnished to any school seeking accreditation as a special purpose school. Suggestions for the improvement of policies and regulations are considered annually by the State Board of Education. Notification of a thirty-day period giving opportunity for public comment and a public hearing must be given prior to any State Board action which would substantially revise these documents.

KSDE procedures for accrediting special purpose schools ensure that exceptional children enrolled in such schools will have all the rights they would have if educated in a public school. Application for accreditation must be made annually. The application must demonstrate that the school is operated in compliance with State statutes, regulations, and standards. The accreditation status for each school is determined by evaluation of the data provided by the school in official reports; reports from State Department of Education staff, including compliance monitoring reports from the Special Education Administration Section; and reports from other agencies, such as the State Department of Health and Environment and the State Fire Marshal. Each school is visited by KSDE staff as part of the accreditation process.

2. Private School Placement by an LEA. The decision to place a child in a private special purpose school is made during the IEP meeting. If such a placement is proposed, the LEA must arrange for the participation in the IEP meeting of a representative from the receiving school, either personally or by telephone. If in doubt, the LEA should contact KSDE and verify that the proposed receiving school is accredited or approved.

The LEA will be held fiscally responsible for the special education services designated in a child's IEP to be provided by the special purpose school. The LEA also is responsible for monitoring the child's progress in the private special purpose school and should participate in any revision or annual review of the child's IEP. The LEA should receive and have on file a copy of any IEP developed while the child is enrolled in the private school.

Justification for removal of the child from the regular education environment, as set forth in the least restrictive environment chapter of the plan, must be included in or attached to the records of any child placed in a private special purpose school.

When it is determined that private school placement is necessary, a contract for the special education services specified in the IEP must be executed and submitted to KSDE for approval.

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Definitions

1. *Certification* means the granting of an initial teaching certificate by the KSDE or the addition of a provisional endorsement or the addition of endorsements on a certificate.
2. *Competency* means the demonstrated ability to perform to an established criterion level.
3. *Endorsement* means the code numbers and legend printed on the certificate which identify the level and field or subject a person is qualified to teach.
4. *Inservice training* means any planned learning opportunity provided to certificated and noncertificated personnel employed by an LEA for purposes of improving the performance of such personnel in an already held or assigned position and training other than that received by an individual in a full-time program which leads to a degree.
5. *Personnel development* means any inservice or preservice activity designed to ensure that all personnel are qualified to adequately perform their duties pertaining to the instruction of exceptional students.
6. *Preservice training* means the preparation leading to a degree or initial certification/endorsement for a specific role in the profession. This includes preparation of individuals new to the education profession as well as preparation of individuals wanting to change educational roles.
7. *Qualified personnel* means persons meeting the highest requirements in the state applicable to a specific profession or discipline. This standard shall apply to the following personnel:
 - a. a teacher employed by an LEA to provide special education service who is certified by the State Board of Education to instruct exceptional children at the level and with the category of students of the actual teaching assignment;
 - b. special education related services personnel certified by the State Board of Education;
 - c. special education related services or instructional personnel who hold current certification from their respective licensing or registering agents appropriate for their special work;
 - d. other related services or instructional personnel for which there is no licensing or registering agent, but who are employed to work with exceptional children. These individuals are approved on an individual basis by the Special Education Administration Section and must also be recommended for employment by their parent training institution; and
 - e. any instructional or related services paraprofessional who works under the supervision of a special education professional in an accredited or approved special education program.

Background

1. Participants in Planning. Since 1973, the State Department of Education has been actively involved in a process designed to maximize use of Kansas resources for preparing instructional and support personnel to serve handicapped children. As the scope of services and responsibilities for the provision of these services has expanded to include a broader group of educators, participants in planning for a Comprehensive System of Personnel Development (CSPD) have also increased.

Comprehensive Program Development in Special Education (CPDSE) participated in original development and annually assists in the revision of the Kansas CSPD by devoting one meeting each year to its review. The CSPD review process, when revisions are recommended, also includes public hearings after having mailed the revision to all local education agencies, public and private colleges, and all advocacy groups in the state to assure their opportunity for an informed response to the recommended revision at the public hearings. Original composition of CPDSE membership has expanded to include a consortium of universities, colleges, State Department of Education, local education agencies, advocacy groups, and professional associations. It is a formal structure which involves a steering committee and task forces. The steering committee meets every other month with interim meetings scheduled as needed. Agencies and organizations represented on the steering committee are the following:

- a. Association of Independent Colleges;
- b. Council for Exceptional Children;
- c. Deans of State University Schools of Education;
- d. Emporia State University, Special Education Department;
- e. Fort Hays State University, Special Education Department;
- f. Kansas Association of School Administrators;
- g. Kansas Association of School Boards;
- h. Kansas Association of Special Education Administration;
- i. Kansas State University, Special Education Department;
- j. Pittsburg State University, Special Education Department;
- k. State Department of Education;
- l. University of Kansas, Special Education Department;
- m. Washburn University, Special Education Department; and
- n. Wichita State University, Special Education Department.

Task forces to CPDSE are appointed as needed. Issues addressed by a task force include teacher supply and demand, teacher training, teacher certification, personnel development resources and dissemination, teacher attrition, statewide coordination of special projects and grants, and CSPD policy development.

CPDSE will focus on the preservice needs identified through the CSPD needs assessment during the 1990-91 school year. These needs are undergraduate preparation and preparation and endorsement for cross-categorical programs.

2. State Inservice Education Opportunities Act. Quality of instructional personnel is the key to an all adequate instructional delivery system. To ensure that quality educational personnel are in charge of instruction in Kansas, the State Board of Education and the Kansas Legislature emphasize the importance of certification which maintains standards of professional competence and staff development at local levels.

Fundamental to the intent of the State Inservice Education Opportunities Act is the philosophy that programs are needs-based. Needs vary from district to district and even among faculty, depending on individual interests, areas of expertise, and teaching assignments. Because of these factors, a local professional development council is required to identify training needs and develop an inservice education program to meet those needs.

In 1978, the State Board of Education appointed the Statewide Task Force on Inservice Education. This group was designated to develop the State Plan for Inservice Education for Fiscal Year 1981 as required by P.L. 95-561. Responsibility for recommending subsequent revisions of the plan was given to the Teaching/Administrator Standards Boards, a committee statutorily authorized as an advisory group for the State Board of Education. Within the Educational Assistance Section of the State Department of Education, an inservice unit has been created and education program specialists appointed to provide leadership and assistance to LEAs in the development of local inservice plans. Local education agencies that choose to develop plans and participate in the State program may use inservice credit for the renewal of State Board certification of employees. The Kansas Comprehensive System of Personnel Development complements the State Plan for Inservice Education. CSPD activities are coordinated with the State inservice unit with local CSPD plans being a part of the local inservice education program submitted to the State Board of Education, if the district so chooses.

3. State Certification and Endorsement for Special Education Personnel. To assure that all personnel necessary to provide special education to all exceptional children are qualified, Kansas has established standards for both certification of special education personnel and approval of training programs in colleges and universities. The State Board of Education is empowered by K.S.A. 72-7513 to adopt and maintain standards, criteria, guidelines, or rules and regulations for the following:

- (4) *Certification of administrators, teachers, counselors, school nurses and supervisors of school districts and of the state department of education and of teachers and administrators of nonpublic schools.*

Through K.S.A. 72-1388, the State Board establishes regulations for the endorsement of teachers of exceptional children and issues, renews, reinstates, and registers certificates to individuals who have met training and experience requirements. Endorsement is specific to level of instruction and area of exceptionality. There also are standards for certification for special education supervisors/coordinators, administrators, and certain support personnel, such as school psychologists, school social workers, speech clinicians, and audiologists.

Special education support or instructional personnel (such as occupational therapists, physical therapists, music therapists, art therapists, counselors, and nurses) must hold current certification from their respective licensing or registering agents appropriate for their special work. For those special educational support personnel who are licensed through

agencies other than the Department of Education, the KSDE verifies the status of professional licensure prior to approval for State reimbursement.

Paraprofessionals qualified to assist certificated teachers in the instruction of exceptional children, as determined by established standards, are issued permits by the State Board of Education. Additionally, general education instructional personnel must complete a two-hour survey of exceptional children course as a condition of certification.

4. Qualifications of Personnel. The State Board is the only agency authorized by Kansas law to certify teachers and school administrators. The following chart shows the agency from which personnel working with exceptional children must hold current and valid certification or licensure. In all cases where both the State Board and another agency are authorized to certify/license (e.g., psychologist, school nurse, audiologist), State Board training requirements are the more rigorous.

Table 1
Certifying/Licensing Agency for Personnel
Working with Exceptional Children

	KSDE Certificate	Certificate/License Other Agency	Difference between KSDE and Other Accrediting Agency
Adaptive physical education teacher	Y		
Art therapist		American Art Therapy Association	
Dance/movement therapist		American Dance Therapy Association	
Diagnostic teacher	Y		
Music therapist		National Association of Music Therapy	
Nurse	Y	Kansas State Board of Healing Arts	School nurse certification standards are higher than RN license. Both are accepted
Occupational therapist		American Occupational Therapist Association	
Physical therapist		Kansas State Board of Healing Arts	
Recreation therapist		National Recreation and Parks Association or State Parks and Recreation Association	
School audiologist	Y		KSDE certification requires additional course work

	KSDE Certificate	Certificate/License Other Agency	Difference between KSDE and Other Accrediting Agency
School counselor	Y		
School psychologist	Y	Kansas Behavioral Sciences	Both require advanced degrees; KSDE certification requires additional training in working in schools
School social worker	Y		KSDE certification requires master's degree, social work license requires bachelor's degree
Special education administrator/ supervisor/coordinator	Y		
Special education media specialist	Y		
Special education teacher Behavior disorders	Y		All require Kansas teaching certificate and additional college credit in special education
Early childhood handicapped			
Gifted			
Hearing impaired			
Interrelated (cross-categorical)			
Learning disabilities			
Mentally retarded			
Physically impaired			
Severely multiply handicapped			
Visually impaired			
Speech/language clinician	Y		KSDE certification standards are comparable to ASHA
Work study/vocational special education	Y		

5. Special Education Personnel Needs. Personnel needs information is the responsibility of the State Department of Education, with data provided by local education agencies and individuals applying for Kansas certification. Position vacancies are reported by area of exceptionality to be served, levels of instruction, and service delivery model. State agency data are also analyzed to determine the source of special education personnel, in-state or out-of-state colleges, and the degree to which the teaching force is "aging out."

In order to measure the rate of growth of special education services in Kansas and to estimate the rate of attrition, vacancies are coded as new positions or replacements. The resulting data are reported to colleges, universities, the State Board, local education agencies, and the Kansas Legislature.

Through a contract with a state university, the KSDE has studied supply and demand for educational personnel since the early 1980s. Other contracts with this university have supported comprehensive studies of the reasons for attrition of Kansas special education personnel.

6. Inservice. A philosophy endorsed by the State Department of Education is that inservice for local education agency personnel will be meaningful only if based on specific local needs. Primary responsibility for identifying these needs and providing appropriate training activities lies with each school district. The role of the State department is to support and enhance local efforts. Responsibilities of the State department include the following:
 - a. statewide orientation to significant issues, implications of new legislation, rules, and regulations;
 - b. statewide or regional training to meet generalized local concerns; and
 - c. technical assistance to individual local education agencies in meeting specific training needs.
7. Needs Assessment Procedures. In developing State-initiated inservice activities, the following procedures are used to identify needs.
 - a. Results of any pertinent surveys conducted by Kansas-National Education Association, United School Administrators of Kansas, Kansas Association of Special Education Administrators, and other sections of the KSDE are considered in planning State inservice activities.
 - b. Kansas Educational Dissemination/Diffusion System (described later in this section) is used to identify effective and innovative practices which can be incorporated in the training.
 - c. Citations and recommendations of on-site monitoring teams are analyzed annually to identify those problems most often encountered by LEAs in implementing State and Federal special education requirements.
 - d. In the fall of 1989, preservice and inservice CSPD needs assessment procedures and instruments were developed by the Kansas State Department of Education, Special Education Administration Section. The instruments were designed to gather information for assigning priorities for the content, training, strategies, sources, and incentives for training as well as for the target populations. Kansas educators will be surveyed annually in order to keep needs information current.
8. Analysis of Needs Assessment Data. Analysis of compliance monitoring on-site review citations for FY 1990 indicates staff development training needs, ranked by frequency of citations, as: development of individual education programs, least restrictive environment, comprehensive evaluations, and free and appropriate public education.
 - a. Categorical Program area needs identified by KSDE staff and state association studies have been identified as: competency-based instruction, integration, and behavior modification for SMH/deaf-blind; Brolin's Life Centered Career Education Curriculum for EMH/TMH; Teaching New Behaviors for BD; training of audiologists; school climate for social workers; and assessment of preschool age and of SMH for school psychologists.

- b. Analysis of the CSPD needs assessment study included ranking the highest reported needs by level of instruction and role of the 1,346 respondents by each of eight regions and statewide. In addition to content needs, other data include the preferred time frame, source, format, incentive or motivating considerations for staff development, and the preservice areas to be addressed within the next five years. These data are summarized as a part of the Kansas State Department of Education Inservice Plan, July 1990 through June 1995 and a full report of the study.
- c. Following is a summary reported by role of personnel (target populations) rankings for general content areas of need.
 - (1) Regular education teachers: Educational programming, assessment, parent involvement, and CSPD.
 - (2) Special education teachers: Educational programming, assessment, IEP development, parent involvement, and CSPD. Regular education administration: Educational programming, assessment, educational administration, due process, and CSPD.
 - (3) Special education administration: Educational programming, parent involvement, due process, educational administration, and CSPD.
 - (4) Special education provider: Educational programming, assessment, parent involvement, IEP development, educational administration, due process, and CSPD.
 - (5) Paraprofessionals: Educational programming, assessment, parent involvement, IEP development, educational administration, due process, and CSPD.
- d. Following is a summary reported from statewide results for data considering preferred time frame, source, format, incentive or motivating considerations for staff development. This information is described for each of the target populations within the full report of the study.
 - (1) The preferred time frame indicated statewide was during contractual time, after school, in late afternoon, and summer.
 - (2) College or university and regional education service centers were ranked as the preferred sources for providing staff development.
 - (3) Effective formats for staff development were conferences or workshops, visits to other programs, ongoing, developmental inservice, and university or college courses.
 - (4) Updating professional skill, increasing knowledge base, and payment of conference/workshop fees were considered to be the incentives or motivating considerations for staff development.
 - (5) The highest ranked identified areas of preservice to be addressed within the next five years were undergraduate preparation and preparation and endorsement for interrelated/cross-categorical programs and for mild, moderate, severe. An additional area related to preservice which was ranked highly is the opportunity for alternative routes to certification/endorsement.

9. Personnel Development Training Plan

- a. Educational programming area (teaching strategies, selecting and modifying content of materials, management procedures for organizing instruction and student management techniques, service delivery) includes alternatives for diagnostic and prescriptive teaching (four workshops scheduled), functional curriculum (one workshop scheduled), and sharing instructional programs with paraprofessionals (five workshops scheduled).
- b. The educational administration area (administering programs, management strategies, staff/personnel issues, compliance issues) includes the academy of principalship training (two workshops scheduled).
- c. Assessment (identification procedures, diagnosis, making placement decisions, team evaluation procedures, instructional planning) includes functional assessment (one workshop scheduled).
- d. CSPD (Comprehensive System of Personnel Development - creation of local systems for delivery of staff training programs relevant to personnel needs, motivational techniques to participation in staff development activities, obtaining qualified persons to conduct inservice programs) includes effective presentations (three workshops scheduled).
- e. Parent involvement-training contracted through Families Together (the state parent center).
- f. IEP development - standards for training being developed by SEA staff.
- g. Due Process - one workshop being planned.

The following chart displays the scheduled training by content area, time frame, target population, and trainers listed in chronological order of delivery dates.

Content, Time Frame, Target Population, and Trainers

Workshop (Trainers)	Target Population	Date (1990-91)
1. Paraprofessional Planning Committee Workshop (SEA)	Paras	7/10-7/11
2. Paraprofessional Planning Committee Meeting (SEA)	Paras	7/27
3. Summer Institute for Personnel Working with SMH/DB Students (SEA and LEA)	SMH/DB	7/30-8/03
4. Special Education Administrator's Workshop (SEA and LEA)	SEA/IHE	8/09-8/10
5. Effective Presentations Workshop (SEA, Nonagency, and LEA)	Staff Developers	8/20-8/21
6. Utilization of Instructional Paraprofessionals (SEA)	SPED Teachers and Paras	8/30, 8/31, and 9/12

7. Functional Assessment (SEA)	Secondary SPED	9/14
8. Academy of Principalship (SEA, LEA, and IHE)	Administrators	9/15-9/16
9. 8th Annual Conference on Autism (Nonagency)	All	10/05-10/06
10. AD and PT Part I (SEA)	Regular Ed/SPED	10/09
11. Special Ed Instructional Materials Center Coordinators Dialogue (SEA and LEA)	IMC	10/16-10/17
12. CEC/KASEA/KASP Conference (SEA, IHE, LEA)	All	10/17-10/19
13. State Conference for Educators of VI (SEA and LEA)	VI	10/18-10/19
14. Academy of Principalship (SEA, LEA, and IHE)	Administrators	11/07-11/08
15. Midwest Regional Conference for Career Development (SEA, LEA, and IHE)	SPED/Voc Ed	11/09-11/10
16. Ad and PT Part II (SEA)	Regular Ed/SPED	11/26
17. Ad and PT Part III (SEA)	Regular Ed/SPED	1/08
18. Functional Curriculum (SEA)	SPED	1/11
19. KASEA/USA Conference (SEA and LEA)	Administrators	1/23-1/25
20. KASEA Legislative Conference (SEA, LEA)	Administrators	2/18-2/20
21. Midwest Symposium for Leadership in BD (SEA, LEA, and IHE)	BD/Related Services	2/21-2/23
22. Ad and PT Part III (SEA)	Regular Ed/SPED	2/28

Most of the above workshops are funded through a combination of State, Federal, and local funds.

10. Implementation.

- a. Regional Service Centers. Establishment of regional centers was a recommendation by the Comprehensive Personnel Development in Special Education Steering Committee. Eight centers are operational at this time. The State Department of Education envisions expansion to a statewide network of regional service centers.

Regional service centers are defined as (1) agencies that go outside their immediate district/coop for service and (2) agencies that sell various educational services to local districts.

Needs assessment data are analyzed by eight regions of the state and distributed to these regions for use in planning locally/regionally sponsored staff development.

- b. Personnel Development Specialist. Since 1977, KSDE's Special Education Administration Section has supported a full-time specialist to coordinate CSPD activities. Technical assistance and training opportunities are provided to local education agency personnel. Recent statewide inservice training programs have addressed the following objectives:

- (1) to increase skills of local education agency personnel in needs assessment, planning and evaluation, and integrated regular special education staff development activities;
- (2) to increase ability of local education agency decision makers to select regular/special education staff development programs appropriate to district needs;
- (3) to increase skills of building principals and other supervisors in conducting staff development activities which impact services for exceptional children.

Other statewide training efforts have been designed to strengthen knowledge and skills of various populations of education personnel, educational advocates, program evaluation, compliance monitoring, early childhood, transition to adulthood, preassessment (individual diagnostic and prescriptive teaching), effective utilization of the instructional paraprofessional, behavior disorders, and topical workshops on innovative delivery models.

11. Procedures for Acquiring, Reviewing, and Disseminating Research and Demonstration.

- a. The Kansas Office of Comprehensive System of Personnel Development. The Kansas Office of Comprehensive System of Personnel Development serves as a linking agent for human and material resources available throughout the state. The office maintains an information database and responds to statewide requests for resources on working with individuals with disabilities.

The office is not a centralized holder of materials and does not hire a large staff. Materials and programs already available through institutions, organizations, agencies, and their national counterparts, as well as human resource files, are compiled and maintained by the office. The office draws upon those existing resources, including materials and experts nationwide, which have demonstrated ability to effectively solve training/technical assistance problems identified by field requests.

Responsibilities of the office include the following:

- (1) coordinating a shared database with other systems in the *Make A Difference Information Network* (described below),
 - (2) conducting or cosponsoring workshops on innovative practices which have been found to be effective, and
 - (3) supporting and evaluating local Title VI-B projects in the area of personnel development.
- b. Make A Difference Information Network. A group of Kansas agencies entered into cooperative agreement to support an information network for children and adults with disabilities and for their families and service providers. By calling one toll-free telephone number, 1-800-332-6262, this network can help Kansas citizens locate services and other resources available from the vast array of State and local agencies. In addition, service providers can obtain information on training opportunities and resources.

The network began operation in February 1986. Calls are answered by a network operator who determines information needed by each caller. The operator refers the call to State agency or project staff who contact the caller within 24 hours. If a caller requests information on available local services, a computerized services directory generates a list of local agencies for the caller to contact.

The following sponsors provide resources to maintain the network:

- (1) Kansas State Department of Health and Environment provides office space, equipment, funding for the toll-free line, and supervision for the network operator.
 - (2) Kansas State Department of Education contributes funding for the network operator and provides resources to maintain and update the computerized services directory and Personnel Development Resource System.
 - (3) Kansas State Department of Social and Rehabilitation Services/Office of Child and Adolescent Mental Health Services provides information on services available from the State agency and the community mental health centers and provides consultation and information on resources for families of children with serious emotional disabilities.
- c. The Kansas Educational Dissemination/Diffusion System (KEDDS). KEDDS is a project sponsored by the department, was established in 1972 to make information about new educational research and development available to local schools. The State department makes the resource information services of KEDDS available to any agency or organization with established relationships to the education of students with handicaps. KEDDS is organized around two elements:
- (1) Clients/users. Clients are defined as any educational organization that requests help in solving or working on a problem which has been identified as important. Some organizations could be both clients and part of the resource pool, depending on the situation. The State department or universities and colleges are good examples of clients and resources.
 - (2) Linking component. The linking component consists of a staff of two professional facilitators plus support staff. The linkage component staff is housed in Wichita.

These facilitators serve as helpers to local school districts in developing a process in their school that will assist them in implementing new educational programs. They also help local education agencies find the resources necessary to make them successful at change. Activities carried out by the facilitators include the following:

- (a) problem clarification;
 - (b) organization consulting;
 - (c) decision-making workshops (communication skills, change agent training, team decision making, conflict resolution, use of information systems);
 - (d) assistance in training;
 - (e) assistance in finding resources;
 - (f) assistance in planning for change;
 - (g) assistance in developing community support; and
 - (h) assistance in whatever seems appropriate for local education agencies' successful implementation.
- d. SpecialNet. The State Department of Education has implemented and maintains the SpecialNet telecommunications system for Kansas. Through this national system of electronic mail and electronic bulletin boards, the approximately one hundred special education member sites in Kansas are linked to one another, two Kansas bulletin boards, more than fifty other state and national level boards, as well as the national and international users of the SpecialNet system. The use of telecommunications allows for rapid access to information and equally rapid dissemination of information throughout the state. The two Kansas bulletin boards are administered by the Kansas State Department of Education, Special Education Administration Section:
- (1) KANSAS, which contains information from the department, State budget information, current legislative activities, and other items that affect or relate to statewide special education activities; and
 - (2) KSCAL, which contains current calendar information. This is updated weekly and lists conference, meeting, and training schedules for special education related activities.

12. Evaluation of Inservice. Evaluation data for inservice activities conducted by agency staff are collected and analyzed to ascertain the effectiveness of training. Results are used to plan future training activities. A staff development form is completed by each State education agency staff person to indicate the type of activity and participant population.

Staff analyze evaluation results to determine immediate response to inservice activities. In addition, follow-up surveys are conducted with inservice participants to determine impact of training on job performance. These evaluation results are used in planning future training activities.

All site visits and local plan analysis for compliance monitoring by agency staff address the mandated areas of personnel development.

13. KSDE Responsibility for CSPD. In order to implement State and Federal mandates for the education of all exceptional learners, it is critical that LEAs have an adequate supply of highly competent professional and paraprofessional personnel. Not only is it necessary for special educators to be provided with excellent training at the preservice level, but there is an increasing need for them to be provided with opportunities to improve/upgrade skills and to learn new instructional skills through inservice. Since the earliest mandates for special education services, this need has been recognized at the national, state, and local levels both through increased funding for such activities as well as higher standards for such training. To address this need, the Education of All Handicapped Children Act (P.L. 99-457) requires that in order to qualify for Federal assistance under this Act, a State must establish "policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of (the Act) are appropriately and adequately prepared and trained." In turn, the Federal law requires that LEAs establish "procedures for the implementation and use of the comprehensive system of personnel development established by the State education agency."

The Kansas State Board of Education has recognized the importance of personnel development by the inclusion of it in its strategic directions for Kansas education. The specific strategic direction states that, *"We believe that the strategic directions for the structuring of Kansas education must be organized to extend and update the professional and leadership excellence of Kansas educators essential for quality education. Outcome: A comprehensive preservice and inservice system of personnel development to assure that there are sufficient personnel with the competencies necessary to carry out quality education programs."*

Policies

1. CPDSE Steering Committee. The State Commissioner of Education shall appoint members to serve on the Comprehensive Program Development in Special Education (CPDSE) Steering Committee. The purpose of this committee shall be to maximize the use of Kansas resources for preparing instructional and support personnel to serve exceptional students and to assist in the revision of the Kansas Comprehensive System of Personnel Development (CSPD).

Membership of the CPDSE shall include representation from the teacher education institutions, the State Department of Education, local education agencies, advocacy groups, and professional associations.

34 CFR 300.380-381

2. Annual Need Assessment. The KSDE shall conduct a comprehensive annual needs assessment.

34 CFR 300.382

K.S.A. 72-9601

3. Response to Needs Assessment. The KSDE shall undertake personnel development efforts, in response to the annual needs assessment. Such efforts shall include:
- a. support of innovative and/or exemplary personnel development programs;
 - b. development of new materials and the modification of existing materials for personnel development;

- c. dissemination of information from educational research, demonstration, and promising practices, and use of instructional media for personnel development and instructional programming; and
- d. KSDE sponsored personnel development programs based on assessed needs at the state, regional, and local levels.

34 CFR 380-387

K.S.A. 72-9601

- 4. Evaluation. The KSDE shall evaluate the effectiveness of State-sponsored personnel development activities.

34 CFR 380-387

34 CFR Section 74, Part 100a, and Appendices

- 5. Standards for Special Education and Related Services Personnel. To assure that all personnel necessary to provide special education to all exceptional children are qualified, the KSDE shall establish standards for both certification of special education personnel and the approval of educational training programs in teacher education programs. For those special education support personnel who are licensed through agencies other than the KSDE, the status of professional licensure shall be verified prior to program approval for State reimbursement. The KSDE will continuously assess the effectiveness of the permit system for special education instructional paraprofessionals.

34 CFR 300.380-387

K.S.A. 72-960

K.S.A. 72-7513

K.S.A. 72-13881

K.A.R. 91-12-53, 23, 25, 61

- 6. Collaboration/Coordination. The KSDE will plan and implement personnel development activities which will encourage the collaboration and coordination of efforts at the State and local levels, the utilization of the most current technology and training techniques in meeting the personnel development needs, and the use of appropriate networks, linkages, and databases.

34 CFR 300.382

- 7. LEA Responsibilities. Each LEA will include a description and procedures for developing, implementing, and evaluating its inservice education program, or reference an inservice education plan approved through the State Board of Education, within its local comprehensive plan for special education. The inservice education plan shall be updated annually as required by the KSDE; the local comprehensive plan shall be updated at least every five years when the LEA submits a full, intact local comprehensive plan to the KSDE. The description shall specify:

- a. methods for assuring the opportunity for representatives of all certified and licensed staff groups to participate in the development, review, and updating of the local inservice education plan (this may occur through an existing Professional Development Council as defined in S.B.R. 91-1-146b);
- b. goals of the inservice education plan;
- c. objectives of the plan which are based upon the prioritized needs and contribute to the achievement of the established goals;

- d. activities designed to accomplish the objectives of the plan;
- e. a needs identification process to determine the inservice priorities for educational personnel to include special and regular educators;
- f. methods for determining the effectiveness of the personnel development activities;
- g. incentives, such as release time, provided for staff participation in the personnel development activities;
- h. methods for acquiring and disseminating significant information and promising practices to local program personnel;
- i. designation of the person(s) responsible for the implementation of the plan;
- j. methods for interfacing the personnel development plan with any existing district approved State inservice education program if the special education plan is separate from such;
- k. procedures for the implementation and use of the comprehensive system of personnel development established by the KSDE; and
- l. budget commitment to the program.

34 CFR 300.224
34 CFR 300.380-387

K.S.A. 72-9601
S.B.R. 91-1-146a-146e
K.A.R. 91-12-34
K.A.R. 91-12-61

- 8. Confidentiality. The LEA shall provide all persons collecting or using personally identifiable information with training or instruction regarding the State's policies and procedures governing confidentiality of student records.

34 CFR 300.572(c)

- 9. Recertification Requirement. General education instructional personnel shall complete a two-hour survey of exceptional students course as a condition of recertification. Each teacher shall submit to the KSDE verification of the completion of this course during the process of application for renewal of the Kansas teaching certificate.

K.A.R. 91-1-30(b)

- 10. Paraprofessionals. Special education instructional paraprofessionals shall be supervised by properly endorsed professional staff. Each paraprofessional also shall participate in 20 clock hours of inservice training each year (or the equivalent in college credit) and shall hold a paraprofessional permit issued by the KSDE.

K.A.R. 91-12-61

Procedures

- 1. KSDE Responsibilities. The KSDE will:

- a. establish personnel development as a priority for special grant application from State and Federal sources;
 - b. establish a resource bank of existing personnel development training programs and materials within the state for purposes of dissemination;
 - c. conduct an annual comprehensive needs assessment to determine if a sufficient number of qualified personnel are available within the state, to identify preservice and inservice training needs of statewide significance, and to identify current and emerging needs which impact the area of personnel;
 - d. develop and implement a plan of personnel development activities based upon the assessed needs;
 - e. provide, through SpecialNet and other means, a State staff development calendar related to special education.
2. Authority to Contract. The KSDE may enter into contracts with teacher education institutions, LEAs, and/or other agencies, institutions, or organizations for the development of new training materials and/or the modification of existing personnel development materials.
 3. Technical Assistance. The KSDE provides technical assistance to LEAs for the development of the local comprehensive plans for personnel development through such means as consultation, workshops, and a quarterly newsletter related to personnel development.
 4. State Approval of Teacher Training Programs. The KSDE ensures that personnel who work with exceptional students are appropriately and adequately trained in the area(s) in which they provide special education and related services by monitoring:
 - a. the accreditation and program approval at teacher education institutions; and
 - b. the State accreditation of schools offering special education programs.
 5. State Certification of Personnel. For State accreditation purposes, the KSDE annually verifies that each certificated school employee is appropriately certified for the specific assignment of the employee.
 - a. Each professional staff member shall have on file in the KSDE a current certificate/license appropriate for current working assignment.
 - b. Each LEA will file with the KSDE each fall a certified personnel turnaround document which includes all professional staff.
 6. Eligibility for State Aid. For determining eligibility for State categorical aid, the KSDE shall verify (on a quarterly basis) that each professional and each paraprofessional meets the State program approval requirements.
 - a. Each staff member (professional and paraprofessional) shall have on file in the KSDE a current certificate/license/permit appropriate for current working assignment.
 - b. Each LEA shall submit to the KSDE quarterly updates to the personnel reports to include the necessary data for verification of approval status for receipt of State categorical aid.

7. Paraprofessional Permits. The KSDE maintains a database pertaining to the supervision of paraprofessionals and to the extent to which the LEAs provide for the required hours of inservice.

- a. Each LEA will submit to the KSDE quarterly updates to the personnel reports to indicate the professional assigned to each paraprofessional for purposes of supervision.
- b. Each LEA will submit to the KSDE at the end of each school year an end-of-year report which indicates the number of completed hours of inservice.

8. Personnel Needed. The annual personnel development needs assessment conducted by the KSDE shall include:

- a. the number of special education personnel employed by the LEAs which do not meet State approval requirements;
- b. the number of budgeted personnel vacancies; and
- c. the number of unbudgeted personnel positions needed.

The KSDE will determine the numbers of students in preservice teacher preparation in special education and related services and make a comparison of these data to the needs data above.

9. Inservice Training Needs. The KSDE will determine the priority topics to be addressed through inservice training. Each LEA will report to the KSDE topics that address current and emerging needs for professional development. Information also will be obtained on current and emerging needs for professional development through LEA reports, reviews of professional literature, surveys, or other activities that may be appropriate.

10. LEA Personnel Development Plans. Each LEA annually evaluates its personnel development program and, if necessary, updates it. The updated program will be submitted to the KSDE within its local comprehensive plan for special education or through its approved State inservice education plan.

11. State-Sponsored Personnel Development. The KSDE will evaluate the effectiveness of State-sponsored personnel development activities through:

- a. the compiling of data which indicates the numbers and types of inservice activities which were sponsored by the KSDE;
- b. the collection of data related to the numbers and types of participants who attended the activities;
- c. the use and analysis of standard participant evaluation forms at the conclusion of each inservice activity;
- d. when the design of the training so indicates, the use of evaluation techniques to gather impact data from the participants; and
- e. an assessment of the degree to which the activities were sponsored/planned in collaboration with teacher education institutions, LEAs, consumers, and parents.

12. Personnel Development for KSDE Staff. The KSDE will develop and implement structures within the agency which will strengthen collaboration and coordination between the Special

Education Administration Section and other sections within the department pertaining to activities related to staff development. The KSDE Professional Development Council will be responsible for the planning and implementation of a cross-division/section program of staff development activities for staff within the department. Special Education Administration Section staff will participate on the department's Professional Development Council to plan, implement, and evaluate staff development activities for department personnel.

13. Incorporation of Effective Schools Principles. The KSDE will sponsor activities to promote the implementation of the principles of the Effective Schools movement.
14. LEA Records. Each LEA will maintain records (e.g., training agendas, training materials, lists of persons trained) which document that, at a minimum, training regarding confidentiality practices and procedures is conducted for all new personnel collecting or using confidential information about exceptional students. Regular education personnel and support staff who collect or use confidential information about exceptional students shall be included in this training.

XVI

STATE ADVISORY COUNCIL FOR SPECIAL EDUCATION

Definition

State special education advisory council means a lay and professional council consisting of nine members appointed by the state board of education. This council shall offer advice, consultation and recommendations to the state board on matters concerning special education services for exceptional children (K.A.R. 91-12-22(ss)). To provide for representative and statewide participation in decision making related to the education of exceptional children, this council was established in 1974 by the Special Education for Exceptional Children Act (K.S.A. 72-964).

Role of the Council

Council responsibilities under Part B, Education of the Handicapped Act are to:

- (a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;*
- (b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the State regarding the education of handicapped children, and the procedures for distribution of funds under...[Part B, Education of the Handicapped Act]; and*
- (c) Assist the State in developing and reporting such information and evaluations as may assist the [U.S.] Commissioner [of Education] in the performance of his responsibilities under ...[Part B, Education of the Handicapped Act] (34 C.F.R. 300.652).*

Additional responsibilities specified in the State statute include the charge to:

- (1) Advise and consult with the state board in the preparation and administration of the state plan and in the formulation and review of rules and regulations adopted pursuant to this act [the Special Education for Exceptional Children Act];*
- (2) consider any problems presented to it by the state board and give advice thereon; and*
- (3) make recommendations to the state board concerning special education services. In addition, the 'advisory council' shall have and perform such powers, functions and duties as are specified by law (K.S.A. 72-964).*

One of the major functions of the advisory council is to serve as a liaison between the statewide populace and the Kansas State Department of Education. Consumer communication with the council is encouraged and may be accomplished through contact with any council member or the secretary to the council. Local education agency personnel, school patrons, students, lay community persons, private sector, public and private agencies, and educators at all levels are encouraged to submit relevant issues, questions, and problems to the council for consideration and action.

Council Membership

To effectively represent the citizens of Kansas, council members should be knowledgeable and informed relative to public and private interests in special education for exceptional children. All appointments are made for a fixed term not to exceed three years. When a vacancy occurs for any reason other than the expiration of the term of a member, the State Board will appoint a successor for the remainder of the unexpired term. The State director for special education serves as secretary to the council.

The State Board appointment policies for this advisory council include the following:

1. advisory council members may serve no more than two full terms (three years per term);
2. all geographical areas of the state will be represented where feasible;
3. as required by K.S.A. 72-964, membership shall be representative of community, organizational, and education groups interested in the education of exceptional children and will include:
 - a. teacher training;
 - b. general school administration;
 - c. special education administration;
 - d. private schools;
 - e. teachers of exceptional children;
 - f. handicapped individuals;
 - g. advocacy groups;
 - h. local boards of education; and
 - i. parents of exceptional children.

Because State statute limits the size of this council, individual members may be appointed to represent more than one field or special interest group. Members receive no compensation for serving on the council other than reimbursement for travel expenses incurred when attending a council meeting or a subcommittee meeting authorized by the State Board.

Council Procedures

The State Advisory Council for Special Education, operating under State and Federal requirements will:

1. meet as often as necessary to conduct its business and shall meet at once each year to elect a chairperson and a vice-chairperson;
2. by July 1 of each year, submit an annual report of its activities and recommendations to the State Board (this report will be made available to the public);

3. keep official minutes on all council meetings (these minutes shall be made available to the public on request);
4. publicly announce all council meetings and agenda items prior to the meeting (meetings will be open to the public); and
5. provide interpreters and other necessary services at council meetings to panel members or participants with disabilities.

XVII

SPECIAL EDUCATION PROGRAM EVALUATION

Introduction

The delivery of special education services involves a complex interaction of many factors. Decisions must be made so that services can be adequately and appropriately provided. The planning and evaluation process encourages a systematic, explicit, data-based approach to decision making. Program evaluation can be used to facilitate judgments about the need for design, implementation, and outcomes of a range of special education services and programs. The major purposes of evaluation are (a) to assess the effectiveness of the special education program in meeting its objectives and (b) to facilitate program improvement.

Definitions

1. *Deficiencies* means those items for which corrective actions have been required.
2. *Description of procedures* means a local system for the development and implementation of program evaluation which addresses the following components: identification of the individual responsible for program evaluation, the process for development of evaluation questions, procedures for data collection and data analysis, and reporting formats.
3. *Effectiveness* means the degree to which program goals are achieved.
4. *Program evaluation* means assessment of compliance with established standards, criteria, and guidelines; overall effectiveness of meeting the needs of handicapped/exceptional students within the state; and the assessment of best practices.
5. *Statutory directives* means all applicable statutes, regulations, State plans, and applications.

Policies

1. KSDE Evaluation Plan. Each State education agency (SEA) program plan must include procedures for evaluation (at least annually) and the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

34 CFR 300.146

2. KSDE Responsibility. The State will evaluate the effectiveness of special education and related services in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as prescribed by regulation.

The KSDE will adopt and use proper methods of administering each applicable program including the correction of deficiencies in program operations that are identified through monitoring or evaluation.

In order to obtain data necessary for review of the progress or lack thereof made in special education services for exceptional children and to assess future needs for providing special education services on a more comprehensive, expert, economic, and efficient basis, it shall

be the duty of the SEA to conduct an annual survey of the school districts showing the total number of exceptional children within the various categories of exceptionality in the state.

34 CFR 76.101
34 CFR 76.301

K.S.A. 72-971(a)

3. Reporting to U.S. Department of Education. The KSDE and local education agencies (LEAs) shall cooperate and assist in any evaluation of programs or projects as requested by the U.S. Office of Education.

The KSDE will report to the Secretary of Education the results of required program evaluations as may reasonably be necessary to enable the Secretary to perform his duties and the State will maintain records, and afford access to records as the Secretary may find necessary.

20 USC 1232d (b)(6)
34 CFR 76.591; 772(a)(2)

4. LEA Evaluation Plan. Each LEA shall develop and submit to the Special Education Administration Section, a comprehensive plan for providing special education services. Each local comprehensive plan shall include a description of procedures for evaluating the effectiveness of the special education and related services provided by the local education agency.

The program evaluation plan shall be updated annually with those portions of the plan which are unchanged incorporated by reference.

The LEA must implement the program evaluation system at least annually to assess the effectiveness of component(s) of their programs in meeting the needs of exceptional students.

K.A.R. 91-12-34(a)(9)
K.A.R. 91-12-34(b)

Procedures

1. State Education Agency. The Special Education Administration Section will implement an annual management plan for evaluating the effectiveness of programs in meeting the educational needs of exceptional students and assuring compliance with regulatory requirements. The SEA program evaluation plan will:
- identify the individual(s) within the SEA responsible for conducting or coordinating evaluation activities;
 - identify the evaluation issues related to the effectiveness of programs in meeting statutory requirements and in meeting the educational needs of exceptional students;
 - establish time lines for planning, implementing, and conducting evaluation activities;
 - identify resources for disseminating the evaluation information to all involved agencies, State officials, parents, and interest groups;
 - describe strategies for the provision of technical assistance and training for State and local staff on program evaluation;

- f. conduct or manage special studies on program evaluation relative to identified areas of need; and
 - g. specify data collection procedures for the collection of program evaluation data, student information, and the total number of exceptional children and youth within the various categories of exceptionality in the state.
2. LEA Evaluation Plan. Each LEA will submit every five years to the Special Education Administration Section the program evaluation plan in conjunction with their local comprehensive plan. It is essential that planning of the steps in an evaluation study be complete before the actual study is begun. The product of the planning process should be an evaluation plan which includes the following:
- a. the individual responsible for program evaluation,
 - b. who will serve on the evaluation team,
 - c. the evaluation questions to be addressed,
 - d. an information collection plan,
 - e. an analysis plan,
 - f. a report plan, and
 - g. the evaluation management plan.
3. Conducting LEA Evaluation. After the steps for planning a local evaluation study have been accomplished, the study begins. The desired product of an evaluation is information to determine whether a change is needed. The steps in conducting an effective evaluation study are described below:
- a. completing plan and obtaining administrative approval,
 - b. preparing instruments and procedures,
 - c. collecting information,
 - d. analyzing data and interpreting results, and
 - e. preparing reports and planning for action.

XVIII

STATE AID FOR SPECIAL EDUCATION

Introduction

The cost of education of exceptional students frequently exceeds the cost of educating those who are not exceptional. Some excess costs are due to special diagnostic procedures, low pupil/teacher ratios, special equipment and materials, and related services which are required to meet the needs of handicapped or gifted learners. Also, the low incidence of certain handicapping conditions and the unequal distribution of children needing services may require unusual transportation arrangements which increase the expense of educating exceptional children. Recognizing these facts, the Kansas Legislature has, since 1951, appropriated State funds to assist school districts in establishing and maintaining special education programs. Local education agencies that provide special education services in compliance with this plan shall be entitled to receive, in accordance with K.S.A. 72-978:

1. partial reimbursement for the travel expenses of special teachers;
2. partial reimbursement for the cost of transporting exceptional children or, in lieu of pupil transportation, a portion of the actual expenses incurred for the maintenance of exceptional children at a place other than their residence; and
3. reimbursement for approved special education and related services programs.

Definition

Special teacher is defined in K.A.R. 91-12-22(qq) as:

- (1) *A teacher employed by a local education agency to provide special education services who is certified by the state board of education to instruct exceptional children;*
- (2) *special education related services personnel certified by the state board of education;*
- (3) *special education related services or instructional personnel who hold current certification from their respective licensing or registering agents appropriate for their special work;*
- (4) *other related services or instructional personnel for which there is no licensing or registering agent, but who are employed to work with exceptional children. These individuals shall be approved on an individual basis by the special education administration section and shall be recommended for employment by their parent training institution; and*
- (5) *any instructional or related services paraprofessional who works under the supervision of a special education professional in an accredited or approved special education program.*

Included under this definition are art therapists, audiologists, counselors, dance movement therapists, music therapists, occupational therapists, physical therapists, school psychologists, school health personnel, school social workers, special education administrators/supervisors, special education teachers, special music education teachers, speech and language clinicians, and special education paraprofessionals.

Special Education Reimbursement

1. **Formula.** Each year, in accordance with K.S.A. 72-978, pupil and teacher transportation and maintenance in lieu of transportation reimbursement are subtracted from the total State special education appropriation. The remaining funds are divided by the number of approved full-time equivalency (FTE) special education teachers to obtain the per unit amount of reimbursement. One FTE equals 1,080 clock hours. Each approved paraprofessional unit, as defined in K.S.A. 72-962(h), is counted as two-fifths FTE. No professional or paraprofessional in excess of the ratio of special teacher to exceptional students authorized by the State Board of Education shall be counted in making computations under this Act.

The following example illustrates the special education reimbursement formula. Given special education State funds of \$110,655,541, transportation claims amounting to \$12,933,514, and 5,741 approved FTE special teachers, the formula would be:

$$\frac{\$110,655,541 \text{ (total appropriation)} - \$12,933,514 \text{ (transportation claims)}}{5,741 \text{ (FTE special teachers)}} = \$17,022 \text{ per FTE.}$$

The above amounts do not represent actual figures for appropriations, claims, or FTE unit reimbursements.

2. **Special Education Fund.** K.S.A. 72-7057 requires every local education agency to establish a special education fund. All special education expenditures must be paid from this fund. While itemized claims are not required by the Kansas State Department of Education, accurate records should be kept by the local education agencies for auditing purposes. Such records should include expenditures and lists of supplies, equipment, transportation, contractual agreements, and funding sources used.

Counting Special Education Programs/Pupils for Financial Assistance

1. Districts may establish and maintain special education and related services in the public schools or other settings. Districts also have authority to enter into cooperative agreements with one or more other school districts, contract with any school district, and/or contract with any special purpose school (accredited, private, nonprofit corporation or any public or private institution within or without the state) for special education services. Whenever an exceptional child is educated in another district or in a special purpose school under the above provisions, that child is considered a pupil of the school district of which he/she is a legal resident for the purpose of determining regular State aid entitlement and other financial assistance and payments.
 - a. **District Operated Programs.** Districts that establish and maintain special education programs/services shall receive State reimbursement if the programs/services are approved by the Kansas State Department of Education. Approval will be based on program location, size of classes, appropriateness of facilities, conditions of admission and assignment of pupils, adequacy of equipment, courses of study, method of instruction, and qualifications of teachers. Each district maintaining a program less than full-time (1,080 clock hours) shall be reimbursed on a prorated basis. No reimbursement shall be made for staff employed less than half-time unless approved by the Special Education Administration Section (K.A.R. 91-12-37(a)(2) and (3)).
 - b. **Cooperative and Interlocal Agreements.** Boards of education of two or more school districts may enter into agreements to provide for special education services on a shared-cost basis as agreed to by all districts involved via a cooperative contract or an interlocal

agreement. In both the cooperative contract and interlocal agreements a special education fund is established. All districts will remit their contract obligations to the fund. Pupil transportation may be included or excluded as part of any cooperative agreement. If excluded, each district within the cooperative must submit its own annual survey form and reimbursement requests for pupil transportation.

- c. Contracted Services. Special education reimbursement for any program or exceptional child shall be in addition to any other assistance to which the district is otherwise entitled (K.A.R. 91-12-37(a)(1)). Districts that provide special education services for certain exceptional children through approved contractual agreements with accredited special purpose schools may receive special education reimbursement for these children on a prorated basis. The computation of reimbursement due a district for special purpose school contracts shall be based on the ratio of the number of children served to the average special class size for a given category of exceptionality, as determined annually by the state board (K.A.R. 91-12-37(a)(4)). Districts that provide special education services through approved contractual agreements with other districts may also receive special education reimbursement for transportation. Contracts between the sending and receiving parties must be approved by the Commissioner of Education prior to implementation of the service.
 - d. State Institutions and State Schools. If an exceptional child is housed, maintained, and provided special education services at a State institution, the child shall not be counted by any school district, but shall be counted by the institution for any entitlements or financial assistance (K.A.R. 91-12-37(a)(5)).
2. Summer School. Summer school programs serving exceptional children are permitted and may receive special education reimbursement. Reimbursement will be prorated from the FTE unit reimbursement for the fiscal year according to the number of days or clock hours of instruction offered. In other words, a summer school program of 45 days/270 clock hours would receive reimbursement in the amount of one-fourth of the FTE unit reimbursement (180 days/1,080 clock hours) for the current fiscal year.
 3. Preschool Programs. Preschool programs serving exceptional children (ages birth to school age) are permitted and may receive special education reimbursement. Reimbursement will be prorated from the FTE unit reimbursement for the fiscal year according to the number of days or clock hours of instruction offered.

In 1988, K.S.A. 72-7033 was amended to define "pupil" to include three-year-olds who are regularly enrolled in the district and attending special education services provided for preschool-aged children. Under this definition, three-year-old children who are identified as handicapped, have an IEP, are regularly enrolled in the public school, and are receiving special education services on September 20 are eligible for equalization aid. Children must be three years of age by September 20 to qualify for equalization aid.

Transportation

1. Reimbursable Expenses. Each school district which has provided approved special education services shall be entitled to receive reimbursement for the extra travel expenses incurred. Such extra expense may include travel by itinerant special teacher/paraprofessional staff, pupil transportation, or pupil maintenance in lieu of transportation.
2. Pupil Transportation. Pupil transportation reimbursement shall be in an amount equal to 80 percent of the actual travel expenses incurred each school year. When transporting exceptional children, the district shall enforce applicable safety standards and should assure

that adequate liability coverage is maintained. Travel time for each child should not exceed one hour each way (K.A.R. 36-13-31(a)(3)(c)) without parental consent. When more than one pupil is transported in the same vehicle, the amount which can be claimed shall be based on the average cost per pupil utilizing this vehicle.

3. Teacher and Paraprofessional Travel Allowance. Reimbursement is allowed for the travel of special teachers during the conduct of assigned duties directly related to providing special education and related services (K.A.R. 91-12-37(b)(2)). Expenses to attend professional meetings, inservice, etc., are not reimbursable. Reimbursement shall not exceed 80 percent of the actual travel expenses incurred per special teacher per school year. The same rate applies whether the travel is by the teachers/paraprofessionals' private car or by a school-owned vehicle. If more than one teacher travels in the same vehicle, the amount which can be claimed shall be based on the average cost per teacher.
4. In-District Pupil Transportation by School Bus. Reimbursement for the actual expense of transporting any exceptional child to special education services provided in the school building normally attended by the child shall be claimed under the regular education transportation aid provisions of K.S.A. 72-7047 (K.A.R. 91-12-37(b)(1)(A)). Any additional cost incurred in transporting an exceptional child to another facility where that child receives special education services shall be reimbursed as prescribed in K.S.A. 72-978. Reimbursement for the actual costs of providing transportation to other facilities for the purpose of diagnosis or evaluation may be claimed (K.A.R. 91-12-37(b)(1)(B)). Special education transportation reimbursement will not be paid for any exceptional child who has been counted in calculating regular State transportation aid.

In other words, if an exceptional child:

- a. would ordinarily be transported to his/her attendance center by the district's regular bus system;
- b. is transported by the district's regular bus system; and
- c. is provided special education services in his/her regular attendance center, he/she should be counted in calculating regular State transportation aid and not be counted in calculating special education pupil transportation reimbursement.

If an exceptional child:

- a. would ordinarily be transported to his/her attendance center by the district's regular bus system; and
- b. is transported by the district's regular bus system, to an attendance center other than his/her regular attendance center for special education services, that child may be counted in calculating regular State transportation aid for the distance to his/her regular attendance center. Travel expenses incurred in transporting that child from his/her regular attendance center to the attendance center in which special education services are provided may be counted in calculating special education transportation reimbursement.

Special education in-district pupil travel reimbursement is paid at 80 percent of the actual travel expenses. When more than one exceptional child is transported by the same vehicle, the amount claimed is based on the average cost per pupil using this vehicle. For example, if the actual cost per year to transport five students is \$700.00, reimbursement would be 80 percent of \$700.00 or \$560.00. When more than one exceptional child is transported by the

same mode of transportation, the amount which can be claimed shall be based on the average cost per pupil utilizing this vehicle.

5. Special Transportation Needs. Some exceptional children have handicapping conditions that make travel by regular school bus unrealistic and therefore require special arrangements for transportation. Such means may include taxicabs, automobiles, and specially equipped buses or vans. The local education agency is responsible for making and scheduling arrangements for such transportation and assuring that planned schedules are met. The responsible school authority shall assure that all applicable safety standards are enforced and should assure that adequate liability coverage is maintained.
6. Modification of Vehicles. The cost for modification of an authorized school district vehicle to accommodate handicapped children or provision of special equipment, such as ramps and hoists, is reimbursable, subject to prior approval by the Kansas State Department of Education.
7. Contracts for Transportation. If a school district, of necessity, must contract with a parent or other private party for transportation of an exceptional child, the cost to the district to deliver the child to his/her program and return him/her to his/her home may be reimbursed. Each district that enters into a transportation contract shall be responsible for making payment to the party providing the transportation. Transportation reimbursement shall be available to any district that actually provides transportation for exceptional children, if the special education services are provided through approved contractual agreements (K.A.R. 91-12-37(b)(1)(D) and (E)). Two round trips per day may be reimbursed but in no case can the reimbursement exceed 80 percent of actual cost incurred per exceptional child per year.
8. Transportation to Special Purpose Schools. Reimbursement for transportation to and from in- or out-of-state residential facilities or institutions is permitted, provided the local school district has agreed to and incurred such expenses. Transportation may be by public, private, or school-owned vehicle. Such expenses must be approved by the Kansas State Department of Education. If funds are available and approval is granted by the Kansas State Department of Education, reimbursement will be made to the sending district as part of the final payment.

K.A.R. 91-12-37(b) authorizes reimbursement for transportation provided to centers, clinics, and other facilities for the purpose of diagnosis, evaluation, or continuing educational services.
9. Transportation to Other Districts. If an exceptional child is transported to special education services in a district other than the one in which he/she resides, transportation costs may be paid by either the sending or the receiving district. Special education reimbursement will be paid as requested.
10. Expenses Reimbursed in Lieu of Travel. Expenses incurred to provide room and board or nonmedical care, or both, to an exceptional child shall be at no cost to the parents of the child if the school district in which the child resides provides special education services to the child at a place outside the school district in which the child resides (K.A.R. 91-12-37(c)). Costs of such maintenance may be met by funds from any public or private source including insurers and similar third parties. A portion of the costs incurred by a school district are reimbursable. Reimbursement in lieu of transportation may be claimed for 80 percent of the actual maintenance expenses up to a limit of \$600 per exceptional child per school year.

Public School Boarding Facilities

A boarding facility operated by a school district may use a combination of funding sources, such as private donations, gifts, and estates, to help defer operating costs and also be eligible for State and Federal moneys. In the combination and use of these funds, care must be taken to protect against duplicate funding for the same services, equipment, supplies, and facility maintenance.

Provisions for Severely Multiply Handicapped/Deaf-Blind

K.S.A. 72-853 authorizes the Kansas State Department of Education to expend available funds for the purpose of sending children who are deaf-blind or otherwise severely handicapped to any facility, school, or institution within or without the state of Kansas which provides a qualified program of education for such children. These funds may be spent for evaluation and diagnosis, room, board, tuition, transportation, and other items which are necessary to the education of such children. In interpreting and carrying out the provisions of this Act, the term deaf-blind children, whenever used, shall be construed to include any child whose combination of handicaps of deafness and blindness prevents him/her from profiting satisfactorily from educational programs provided for the blind child or the deaf child. Otherwise severely handicapped children, wherever used, shall be construed to include any child whose handicap or combination of handicaps prevents him/her from profiting satisfactorily from educational programs provided through a sponsoring public school district in this state. Additional information regarding application forms and payment procedures may be obtained from the Special Education Administration Section.

Procedures for Obtaining Special Education Reimbursement

1. **Payment Schedule.** Any district requesting reimbursement under the Special Education for Exceptional Children Act shall submit prescribed forms to the State Department of Education. Every district shall make such periodic and special reports of statistical and financial information as requested by the State Board. If, after receipt of the required reports from the administering units, the Kansas State Department of Education is satisfied that the programs maintained during the school year have been in accordance with law, payment shall be made on the following schedule:
 - a. October 15: Payment based upon an amount equal to 25 percent of the estimated entitlement per full-time teaching equivalency unit, less overpayments. **Note:** Reimbursement for summer programs is included in the October payment.
 - b. December 15: Payment based upon an amount equal to 50 percent of the estimated entitlement per full-time teaching equivalency unit, less October 15 payment.
 - c. March 15: Payment based upon an amount equal to 67 percent of the estimated entitlement per full-time teaching equivalency unit, less prior payments.
 - d. April 15: Payment based upon an amount equal to 84 percent of the estimated entitlement per full-time teaching equivalency unit, less prior payments.
 - e. June 25: Final payment which includes full entitlement (including transportation) less payments made in October, December, March, and April. **Note:** Individual claims for homebound and special purpose school contracts are included in the June payment.
2. **Formula for Payment.** Special education reimbursement will be based on the number of full-time equivalency teachers/paraprofessionals employed as of September 1. Any approved personnel employed after September 15 will be reimbursed at a rate equal to the proportion of the number of full months employed to the full school year (nine months). For example, if

the FTE reimbursement was \$17,022 and the employee was hired November 1, the local education agency would be entitled to .8 FTE x \$17,022 = \$13,618.00.

3. Adjustment for Overpayment. In the event that any district is paid more than it is entitled to receive under any distribution made under K.S.A. 72-978, the KSDE shall notify the district of the amount of such overpayment. Such district shall remit the amount of overpayment to the Kansas State Department of Education. The Kansas State Department of Education shall remit any money so received to the State treasurer, and the State treasurer shall deposit the same money in the State treasury to the credit of the general fund. If any district fails to remit, the Kansas State Department of Education shall deduct the excess amounts paid from future payments becoming due to such district. In the event any district is paid less than the amount to which it is entitled under any distribution made under this Act, the Kansas State Department of Education shall pay the additional amount due at any time within the school year in which the underpayment was made or within sixty days after the end of such school year.

XIX

ADMINISTRATION OF PART B FUNDS

Priorities

In the state of Kansas, funds received under Part B of the Education of All Handicapped Children Act will be used in accordance with the priorities set forth in Section 612(3) of the Act *first with respect to handicapped children who are not receiving an education, and second with respect to handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.*

Currently State law mandates the provision of special education services to handicapped children ages 5 through 21. No children in this age group are known to be unserved. No later than July 1, 1991, special education services for children ages 3 and 4 also are mandated. Provision will be made to assure that, if unserved children in the 5-21 age cohort are identified, special educational services will be made available immediately. In 1991, this same provision will be made for 3 and 4 year old handicapped children. The following procedures shall be implemented to ensure that no handicapped child remains unserved and that all Part B funds are expended in accordance with the provisions of the Act.

1. Statewide child identification activities shall be conducted as described in Chapter III of this plan.
2. The Special Education Administration Section of the Kansas State Department of Education shall disseminate information about parent/child rights in regard to special education and shall encourage parents and advocates to report unserved or underserved children via a toll-free WATS line maintained by the KSDE.
3. In order to be eligible for its local education agency entitlement under P.L. 99-457, each school district or cooperative must do the following:
 - a. make application to the State Department of Education as set forth in Section 614(a) of the Act; and
 - b. provide satisfactory assurance that:
 - (1) there are no known handicapped children or youth (ages 5-21) residing within the district who do not have the availability of free, public education services and that should a resident handicapped child in this age group be identified, then free, public, special education services will be made available to that child;
 - (2) by July 1, 1991, all handicapped children ages 3 and 4 will be identified and provided the opportunity for free, public, special education services; and
 - (3) any Part B funds allocated to the district shall be used to provide appropriate services (as designated in each child's individualized educational program) to the most severely handicapped children within each disability area not currently receiving such services.

The entitlement of any district unable or unwilling to meet the above criteria shall be held by the State Department of Education in a contingency fund. Any local district entitlements held in this fund shall be applied toward the cost of services for any unserved handicapped child for whom special education services are mandated and who becomes known within that district.

Allocation of Funds

The amount of aid that a State is eligible to receive under Title VI-B is determined on a formula basis; the primary factor is the number of handicapped children aged 3 through 21 receiving special education and related services. In Kansas no less than 75 percent of the State's allocation will be *passed through* to eligible local education agencies to help defray the excess cost of special education. No more than 5 percent will be used by the State for administrative costs related to carrying out the provisions of the Act. The remaining funds will be used to support a competitive grant program.

LEA Applications: Pass-Through Funds

1. **Priorities for Use of Funds.** During fiscal year 1991, appropriate special education services must be provided to all handicapped children ages 5 through 21. Each local education agency must give assurance that it is providing, or is prepared to provide, an education to all such children of school age regardless of the severity of their handicapping condition. If any district has an unserved handicapped child, (that is, a child who is not receiving an education because his/her district of residence cannot or will not provide appropriate special education services), the LEA application must first address services for this child. Beginning in fiscal year 1992, this same assurance must be given regarding services for handicapped children ages 3 and 4.

Priority for the expenditure of funds must be given to unserved handicapped children or to the most severely handicapped children in any category for whom educational services currently are inadequate or inappropriate. This focus on the most severely handicapped receiving inadequate services does not mean that only projects for students with severely and profoundly handicaps will be approved. If all severely and profoundly handicapped children are being served appropriately, the moderately handicapped population may be targeted for the use of pass-through funds. Once students with moderate handicaps are fully served, funds may be expended on students with mild handicaps.

Title VI-B pass-through funds may be used for such inservice activities as are necessary to guarantee that general and special education personnel are qualified to provide appropriate instructional and related services to handicapped children. The intent of the program is that each student with a handicap have a free and appropriate public education, i.e., receive all of the educational services necessary to attain his/her potential. Progress toward full service begins with services for children with the most severe handicaps and moves toward services for students with the least severe handicaps.

2. **Eligibility Criteria.** As a condition of eligibility for pass-through funds, a district must have an approved local comprehensive plan for special education on file with the Special Education Administration Section. This plan meets most of the Federal application requirements in Sections 300.220-300.240, Title 34, CFR (see Chapter XX, Monitoring and Complaint Procedures). Additional assurances required by the regulations are included in the LEA application forms furnished by the KSDE. In addition to an approved plan, the LEA must have completed, in accordance with prescribed time lines, any corrective actions required by the KSDE as a result of complaint investigation or compliance review.

A district also must generate at least \$7,500 under the allocation formula. Because consolidated applications are allowed, many Kansas districts meet this requirement through their participation in a special education cooperative or interlocal agreement.

3. Consolidated Applications. Consolidated applications may be made by consortia of districts which have on file a cooperative or interlocal contract approved by the Kansas Commissioner of Education. A special education cooperative or interlocal is defined as a plan whereby the boards of two or more school districts enter into an agreement to provide special education services for all exceptional children on a shared-cost basis. If individual districts within the cooperative provide some special education services independently from the cooperative, either:
 - a. the local comprehensive plan submitted by the cooperative must show how these individually provided services are articulated to assure full educational opportunities for all exceptional children; or
 - b. the district providing independent special education services must submit a separate plan showing how all resident exceptional children will be served.

Districts participating in cooperatives or interlocals jointly decide how Part B funds will be spent and submit a single consolidated application.

It is anticipated that local education agency applications for fiscal years 1991-1993 will be received from seventy to seventy-five special education units, i.e., individual school districts and multidistrict cooperatives. These special education units include all 304 Kansas school districts. Approximately 60 percent of the local education agency applications received will be consolidated applications submitted by special education cooperatives or interlocal entities.

4. Unused LEA Funds. The entitlement of any district unable or unwilling to meet the eligibility criteria for Part B pass-through funds shall be held by the State Department of Education in a contingency fund. Any local district entitlement held in this fund shall be applied toward the cost of services for any unserved school-age handicapped child who becomes known within that district. Any unused entitlement shall be carried-over for one year and added to the current entitlement of that district.
5. Hearing on LEA Application. The time lines established for the submission and final local comprehensive plans are deemed to afford local education agencies reasonable time to establish eligibility for Part B pass-through funds, as are the time lines for resolution of corrective actions resulting from complaints or compliance reviews (see Chapter XX, Monitoring and Complaint Procedures). No final action shall be taken to withhold either State or Federal funds from any school district until that district has had an opportunity to present evidence to the Kansas Commissioner of Education or his designee showing why the application should be approved.

State Administration

During fiscal years 1991-1993, two administrators, seven education program specialists, one auditor, and three secretaries will be employed by the Kansas State Department of Education to administer and provide technical assistance for the Part B program. Administrative funds also will be used for travel expenses of the professional personnel. The total administrative costs are budgeted at 5 percent or less of the State's allocation under Part B.

LEA Special Projects

The discretionary moneys administered by the State will be used to support a competitive grant award program of special projects within the following priorities:

1. provision of special education and support services for handicapped children based on exemplary practices or research findings;
2. establishment or improvement of special education programs and support services for handicapped children ages birth to 3;
3. development and implementation of procedures for evaluating special education programs and services;
4. development of inservice programs to train persons to work more effectively with handicapped children (this includes training for general and special education personnel, volunteers, and parents);
5. improvement of programs which facilitate the transition of students from special education to the adult world; and
6. application of technology to special education programs and procedures.

Requests for proposals are issued for projects that address the above priorities. Proposals for special projects are submitted to the Special Education Administration Section. They are reviewed by an independent panel and approved or disapproved by the Special Education Administration Section for funding in accordance with the recommendations of this panel. Special project applications should indicate education needs of eligible handicapped children, set forth objectives for delivery of needed services, describe specific activities to meet the objectives, and outline the evaluation measures to be used in determining the success of the proposed activities.

Each applicant must ensure that any technology equipment purchased with Part B funds will be used primarily to assist in the provision of education for the handicapped in a manner consistent with the agency's use of local funds to provide similar technology for programs for nonhandicapped students. Additionally, such expenditures must be reasonable and necessary for the proper administration of and/or the enhancement of the special education program, based on stated needs.

By approval of an application or amendment, the State education agency indicates its endorsement of the project and accepts its responsibility to monitor project activities, ensuring that to the greatest possible extent the intended objectives of the project are met.

Audits of Part B Programs

Responding to a Presidential directive that Federal departments and agencies improve their audit coordination and increase their reliance on audits made by State and local governments, the Office of Management and Budget issued Circular A-102, Attachment P on October 22, 1979. Attachment P sets in place the mechanism for a new approach, commonly referred to as the single audit concept, to secure financial and compliance audits of State and local governments receiving Federal assistance. This single audit concept is designed to create an audit partnership among Federal, State, and local governments. It allows for State or local governments to secure organization-wide audits which are relied upon by all levels of governments.

Effective for the fiscal year ended June 30, 1983, audits of unified school districts in Kansas shall conform to the provisions of the U.S. General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities, and Functions as they pertain to financial and compliance audits; the GAO publication entitled Guidelines for Financial and Compliance Audits of Federally Assisted Programs; the provisions of the Compliance Supplement to Office of Management and Budget Circular A-102 (Major Compliance Features); and the audit provisions of OMB Circular A-102, Attachment P.

Audit of December 1 Count

Each school district/cooperative's December 1 count of handicapped children receiving special education is subject to verification by an audit of current individualized education programs. When significant discrepancies are indicated in the reports of local auditors, investigation will be made by State fiscal audit staff. Adjustment will be made in the pass-through allocation of any local education agency unable to document current IEPs for at least 95 percent of the children counted for funding purposes.

Evaluation of Part B Projects

Each project funded under Part B must submit to the Special Education Administration Section an annual evaluation of project activities in terms of progress toward stated goals and objectives. Guidelines and forms for project evaluation are furnished by the State Department of Education. Part B programs also may be reviewed as part of the routine compliance visits.

Recovery of Funds for Misclassified Children

It shall be the policy of the State Board of Education to recover any Part B, Education of All Handicapped Children Act funds made available to any local education agency for services to any child who is determined to be erroneously classified as eligible to be counted under Section 611 of the Act. In order that such a determination of eligibility may be made, local education agencies seeking funds under Part B shall do the following:

1. maintain records showing that each child counted was, on the date of the count, receiving special education and related services as designated in that child's individualized education program.
2. provide documentation that each child counted has been determined, through a comprehensive evaluation, to be handicapped and in need of special education and related services. For the purpose of this count the Federal definition of *handicapped children* shall be used, i.e., *those children evaluated by qualified professionals as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services* (34 CFR 300.13 (a)).
3. provide assurance that no child has been counted who also has been reported for Federal support under Section 1210 of the Elementary and Secondary Education Act as amended by P.L. 89-313.

Procedures for the identification of misclassified children include the following:

1. Routine State auditing procedures examine special education program enrollments. Significant differences between audited enrollments and the number of special education students counted on December 1 will be investigated.

2. Compliance reviews by KSDE staff shall include the examination of student records toward the end of determining the appropriateness of placement decisions. Compliance reviews also may include classroom observations and interviews with parents and LEA staff.
3. Comparisons will be made routinely between the prevalence of handicapped students in the various categories in each LEA and national and State prevalence figures. LEAs with a significantly high or low prevalence of students in one or more categories will be investigated.

If it is determined that overpayment has been made to any local education agency because of an erroneous count, or that payment has been made for a child ineligible to be counted under Federal regulations, the amount of overpayment shall be deducted from that local education agency's allocation in the next fiscal year.

The Federal restrictions on the number and type of handicapped children who may be counted for Part B funds shall in no way affect the responsibility of each local school board to provide special education to all exceptional children as specified in State laws, rules, and regulations.

MONITORING AND COMPLAINT PROCEDURES

Overview of Monitoring Procedures

In order to assure that each exceptional student is provided a free, appropriate public education, the Kansas State Department of Education (KSDE) is mandated by State and Federal governments to undertake monitoring and evaluation activities. This function is designed to ensure compliance of all LEAs within the state with the requirements of State and Federal laws, rules, regulations, and policies governing special education programs. The KSDE will monitor all public education agencies, as well as all private schools which seek accreditation as special purpose schools and developmental special preschool programs which apply for State approval. Specific monitoring activities of the Special Education Administration Section include:

1. review, analysis, and/or approval of LEA data and reports, including:
 - a. local comprehensive plans for special education,
 - b. annual survey and end-of-year reports,
 - c. personnel reports,
 - d. contracts between LEAs for special education services, and
 - e. summaries of local due process hearings and State reviews;
2. investigation of complaints of noncompliance;
3. comprehensive on-site compliance reviews; and
4. assuring the implementation of corrective actions resulting from review of data and reports, on-site compliance reviews, and complaints.

Special education staff members have been assigned to a compliance monitoring unit. Each member of the unit has been assigned specific LEAs. As the monitor, the staff will:

1. serve as the SEA liaison contact regarding compliance for the assigned administrative units,
2. review and approve the local comprehensive plans for the assigned LEAs,
3. review and process personnel data for determining eligibility for State categorical aid,
4. analyze LEA reports and issue citations/corrective actions as indicated,
5. review and make recommendations on waiver requests,
6. respond to parent inquiries and formal complaints,

7. coordinate the comprehensive on-site reviews scheduled in the assigned administrative units, and
8. coordinate follow-up activities to assure implementation of the corrective actions.

The head of the monitoring unit will have the additional responsibility of coordinating all monitoring efforts. This will include:

1. conducting regularly scheduled meetings with the unit staff to review Office of Civil Rights findings, U.S. Department of Education interpretations, litigation and legal opinions regarding special education compliance issues;
2. verification and dissemination of rulings or KSDE interpretations to LEAs and KSDE staff;
3. standardizing findings, corrective actions, and time lines in monitoring reports to LEAs;
4. acting as a mediator when conflict arises regarding a corrective action plan or interpretation of a regulation; and
5. assuring timely action by the KSDE in conducting and reporting of compliance activities.

Review and Analysis of LEA Data and Reports

1. Local Comprehensive Plans. By October 15 of each year, each LEA is required to submit to the SEA a statement of its plan or update thereof for providing comprehensive special education services. This plan reflects progress made in the provision of special education services, changes in local needs, revisions of local policies and procedures, and any additional policies and procedures necessary to meet new State and Federal requirements. The general contents of a local comprehensive plan for special education are specified in K.A.R. 91-12-34.
 - (a) *Each local education agency shall develop and submit to the special education administration section a comprehensive plan for providing special education services. Each local comprehensive plan shall include, as appropriate, a statement of assurance or an explanation of procedures used by the local education agency regarding:*
 - (1) *the provision of a free appropriate public education to exceptional children;*
 - (2) *the protection of confidentiality of student records;*
 - (3) *the implementation of systematic and ongoing screening procedures which locate children who may be exceptional;*
 - (4) *the conducting of comprehensive evaluations;*
 - (5) *the development of an individual education program for each student who is exceptional;*
 - (6) *provision of activities to increase public awareness of services available;*
 - (7) *the placement of each student in the least restrictive environment;*
 - (8) *provision of an appropriate review of each exceptional student's placement;*

- (9) *the graduation of exceptional children;*
- (10) *procedural due process for exceptional children;*
- (11) *the development and use of a comprehensive system of personnel development;*
- (12) *evaluation of the effectiveness of programs in meeting the educational needs of exceptional children;*
- (13) *the suspension or expulsion of students who are handicapped; and*
- (14) *the provision of extended school year services to students who are handicapped.*

The assigned monitor will review each local comprehensive plan, using a checklist which further details the specific content requirements of the local plan. The monitor will inform the LEA of any missing, incomplete, or inaccurate components. Revisions and/or addendums to the plan are required as necessary.

The initial reviews and reports to LEAs are to be completed by December 1. Corrections to the local plans are due by January 1. The monitor will review all local plan addendums submitted by the assigned LEAs and will respond to the LEAs by February 1. When all components of the local plan have been submitted, reviewed, and approved, the monitor will inform the LEA of the approval of its local comprehensive plan for special education.

The local comprehensive plan constitutes the major part of an LEAs application for pass-through funds under Part B, EHA and P.L. 100-297. The application packet for Part B pass-through funds includes additional assurances and budget information. Any LEA which has an unapproved local comprehensive plan will not be eligible for Federal or State special education funds. Written notices of deficiencies and explanation of appeal procedures will be sent to local administrators.

2. Annual Surveys and KSDE End-of-Year Reports. The annual survey on which each LEA reports the number of professional and paraprofessionals positions that it anticipates employing for the next school year also are reviewed. End-of-year reports are required by the KSDE as necessary to provide additional data about specific local programs. This information is available to the compliance monitors.
3. Personnel Reports. Each LEA is required to submit personnel updates to the KSDE four times during the school year and once for the summer term. These reports are used to determine eligibility for State categorical aid, including whether personnel are qualified to perform their assigned duties. They also provide data on caseload/class size and assignments of special education paraprofessionals.

Any instances of possible noncompliance found in the review and processing of the personnel reports will be investigated. If personnel are not appropriately certified for their assignment, the LEA will not receive State categorical funds for those personnel. If the LEA fails to submit the personnel report within the required time lines, the LEA will not receive State categorical funds for that payment period. If the report is submitted in a timely manner for the next payment period, withheld payments will be processed.

4. Contracts. Local education agencies may contract only for special education services, which have been approved by the commissioner of education, upon authorization of the state board (K.A.R. 91-12-36(a)). Copies of proposed contracts for services are reviewed by Special Education Administration Section staff and recommended for approval or nonapproval to the

Commissioner. If contracts are not properly executed, the IEA will not receive the entitlement from State categorical funds.

Complaints

1. Formal complaint procedures are detailed in K.A.R. 91-12-28 as follows:

(1) Any person may file a written, signed complaint alleging that a local education agency is not in compliance with a state or federal law or regulation. The complaint shall state the facts upon which it is based, and shall be filed with the state director of special education, Kansas state department of education. Upon receipt of a complaint, an investigation shall be initiated. At a minimum, each investigation shall include:

(A) An interview with the complainant during which additional information may be gathered and specific allegations of noncompliance identified, verified, and recorded;

(B) a letter or telephone call advising the local education agency of the complaint and soliciting relevant information or documents; and

(C) a written report of findings and any corrective action or actions that are required and the time period within which each action is to be taken. This report shall be sent to the complainant and to the local education agency within 30 days of the receipt of the complaint. An on-site investigation may be conducted before issuing a report.

2. If a report requires corrective action(s), the LEA must, within ten days of the date of the report, submit to the State director of special education:

a. documentation verifying completion of the required action;

b. a written request for an extension of time within which to complete the required action(s), together with justification for the request; or

c. a written notice of appeal in accordance with K.A.R. 91-12-28(c).

Similarly, if a report concludes that the LEA is in compliance with legal requirements, the complainant may appeal the report.

3. Failure to complete corrective action(s) in accordance with time lines specified in the complaint report may result in withholding State and Federal special education funds.

On-Site Compliance Review

1. The on-site compliance review is one method of verifying whether the LEA is fully implementing its approved local comprehensive plan and any corrective action(s) resulting from the analysis of LEA data and reports, complaint reports, or previous on-site reviews. The comprehensive on-site compliance reviews will occur on a five-year cycle with approximately one-fifth of the LEAs being visited each year. During the "off-cycle" years, the compliance monitor shall conduct an informal annual review of each assigned LEA.

2. Comprehensive on-site compliance reviews shall be completed by May 1 for LEAs which do not operate a twelve-month program. To the extent possible, the on-site reviews will be conducted during the first semester of the school year. Each monitor will be responsible for coordinating the comprehensive on-site reviews for his/her assigned LEAs. The KSDE will

determine whether the monitor will conduct the on-site visit alone or use a team. If a team is used, the members of the team will have been trained by the SEA to act as on-site monitors.

3. The purposes of the annual review include verification that corrective actions have been completed and assistance in implementing legal requirements. Program reviews, which are conducted for the purpose of providing technical assistance, may be made only on "off-cycle" years unless special problems or needs are identified by the SEA staff or the LEA staff.
4. Comprehensive compliance review procedures begin with a "paper review" before the actual on-site visit. Prior to the on-site review, the monitor/team will review relevant information and documents on file within the KSDE, including:
 - a. the LEAs local comprehensive plan;
 - b. prevalence of exceptional students based on the most recent December 1 count;
 - c. complaint reports and records of calls made by parents;
 - d. summaries of local hearings and State reviews;
 - e. number, type, and qualifications of personnel; and
 - f. findings from previous on-site visits.

Any problems or matters in need of clarification will be investigated.

5. During the on-site review the LEA is required to present specific documentation that State and Federal requirements are being implemented. The monitor, and the review team members, when applicable, will record notes on the on-site data forms, indicating what documentation had been presented during the review. The determination of the need for additional documentation, visits to programs, or personal interviews will be based upon initial "paper review."

An on-site compliance review includes the following specific activities:

- a. an entry session with the special education administrator and other LEA staff at the discretion of the administrator to include:
 - (1) introductions and clarification of purpose of the on-site review,
 - (2) LEA presentation of overview of program, and
 - (3) discussion of full service status;
- b. review of documentation available in administrative files;
- c. meeting with the local special education advisory council or public meeting with parents and advocates. (Note: If the advisory council is used to obtain input from parents and from staff, it is responsible for summarizing input and sharing it with the compliance monitor/team. The council may elect to obtain input by means of a written survey sent to all parents and staff or by conducting public meetings. The director of special education shall notify the compliance monitor of the method which the council has chosen to obtain input);

- d. review of a random sample of complete student files (including IEPs) for each categorical area served and representative of instructional levels, delivery systems, and program locations;
 - e. visits to school(s) as necessary to verify implementation of IEPs and preassessment procedures;
 - f. interviews with LEA staff as necessary to document or clarify findings from above activities;
 - g. an exit session to present a general overview of the findings of the on-site review (Note: This oral feedback may not necessarily reflect, in detail, the complete results that will be specified in the written on-site review report, but shall include at least the major points regarding the identified deficit areas. Unless otherwise determined by the LEA, the exit session shall be considered a closed meeting. The LEA is encouraged to include superintendents, the board chairman, and chairman of the local special education advisory committee. The LEA may request that the monitor conduct a second exit session at a later time if these individuals are unable to attend the meeting held at the conclusion of the on-site review).
6. A draft copy of the on-site review report will be sent to the local education agency within six weeks after completion of the review. This draft shall cite any noncompliant practices/procedures found; describe findings upon which these citations are based; and specify the corrective action(s) including time lines for completion. This document will be considered final four weeks after receipt of the draft report, unless the LEA contacts the compliance monitor to negotiate areas of disagreement within this time frame. When the LEA negotiates the report, no more than twelve weeks after the on-site shall elapse before the final report is sent to the local education agency. The compliance report shall not be considered a public document until it has become final.

Copies of the final on-site review report shall be sent to the special education administrator, president of the board of control, the superintendent(s) of the LEAs, and members of the review team. When the formal written results of the comprehensive review are forwarded to the LEAs, the SEA monitor will provide technical assistance or assist in the identifying of sources of technical assistance to remediate any deficiencies.

Failure to complete corrective action(s) in accordance with time lines specified in the on-site compliance report may result in withholding State and Federal special education funds.

Appeal Procedures

Appeal procedures are outlined in K.A.R. 91-12-28(c) as follows:

- (1) *Any local education agency or complainant may appeal any compliance report prepared by the special education administration section by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 calendar days from the date the final report was sent by the special education administration section. Each notice shall specify, in detail, the basis for alleging that the report is incorrect. Upon receiving an appeal, an appeal committee, of at least three department of education members, shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 calendar days from the date of receipt of the notice of appeal, and a decision shall be rendered within 5 calendar days after the appeal process is completed*

unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In such event, the decision shall be rendered as soon as possible by the appeal committee.

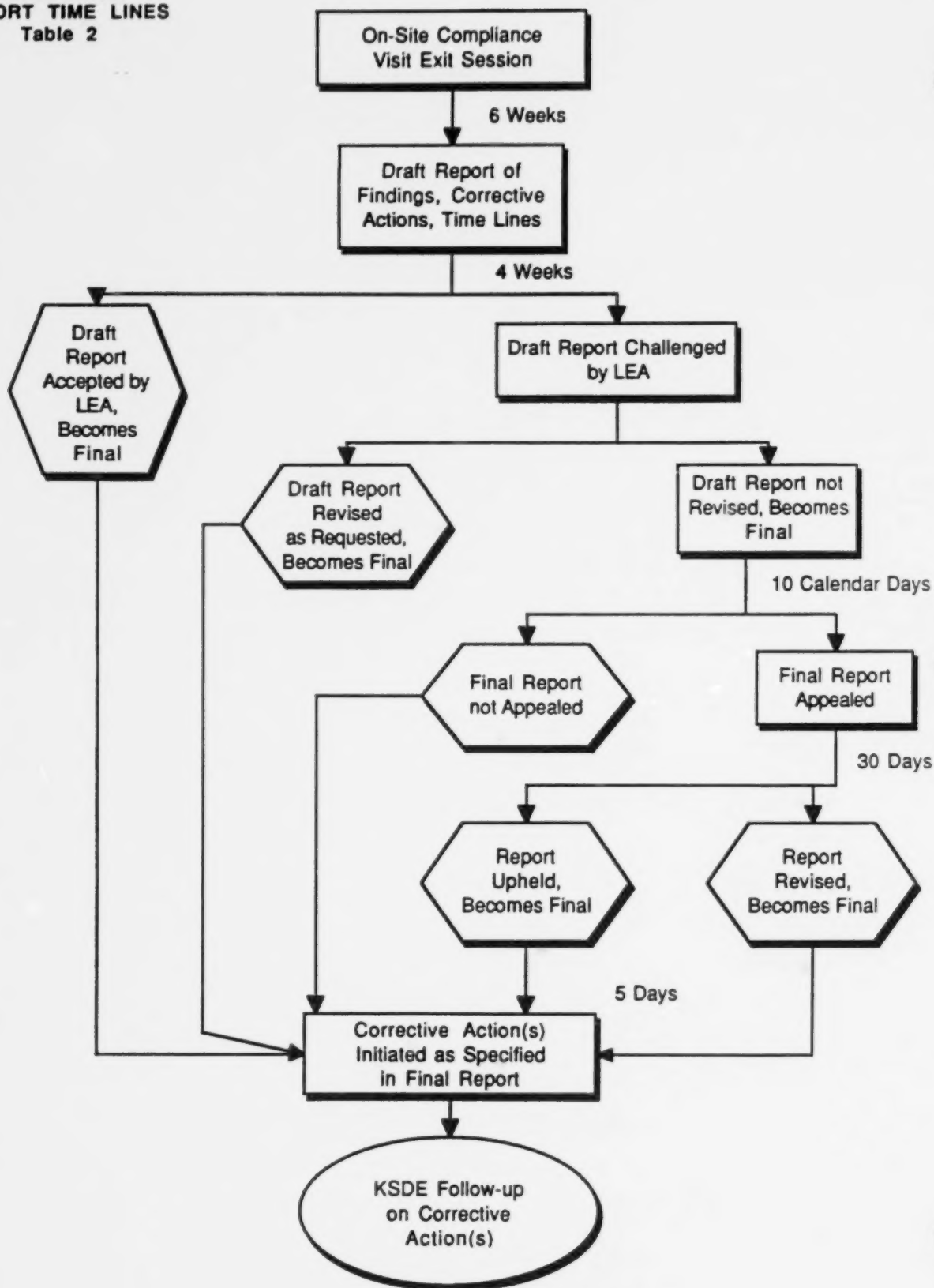
- (2) If an appeal committee affirms a compliance report that requires corrective action by a local education agency, that agency must initiate the required corrective action immediately. If, after 5 days, there has been failure to initiate the required corrective action, the state department of education shall determine, and notify the local education agency of, the action that will be taken to assure compliance. Such action may include:
 - (A) The issuance of an accredited deficiency advisement under S.B.R. 91-31-2;*
 - (B) the withholding of state or federal funds otherwise available to the local education agency; or*
 - (C) any combination of the above action.**
- (3) Any local education agency or any complainant may appeal a final determination of the state department of education to the secretary of the U.S. department of education within 30 days of the department's final action.*

Table 2 shows the time lines for issuing and responding to corrective actions resulting from an on-site compliance visit.

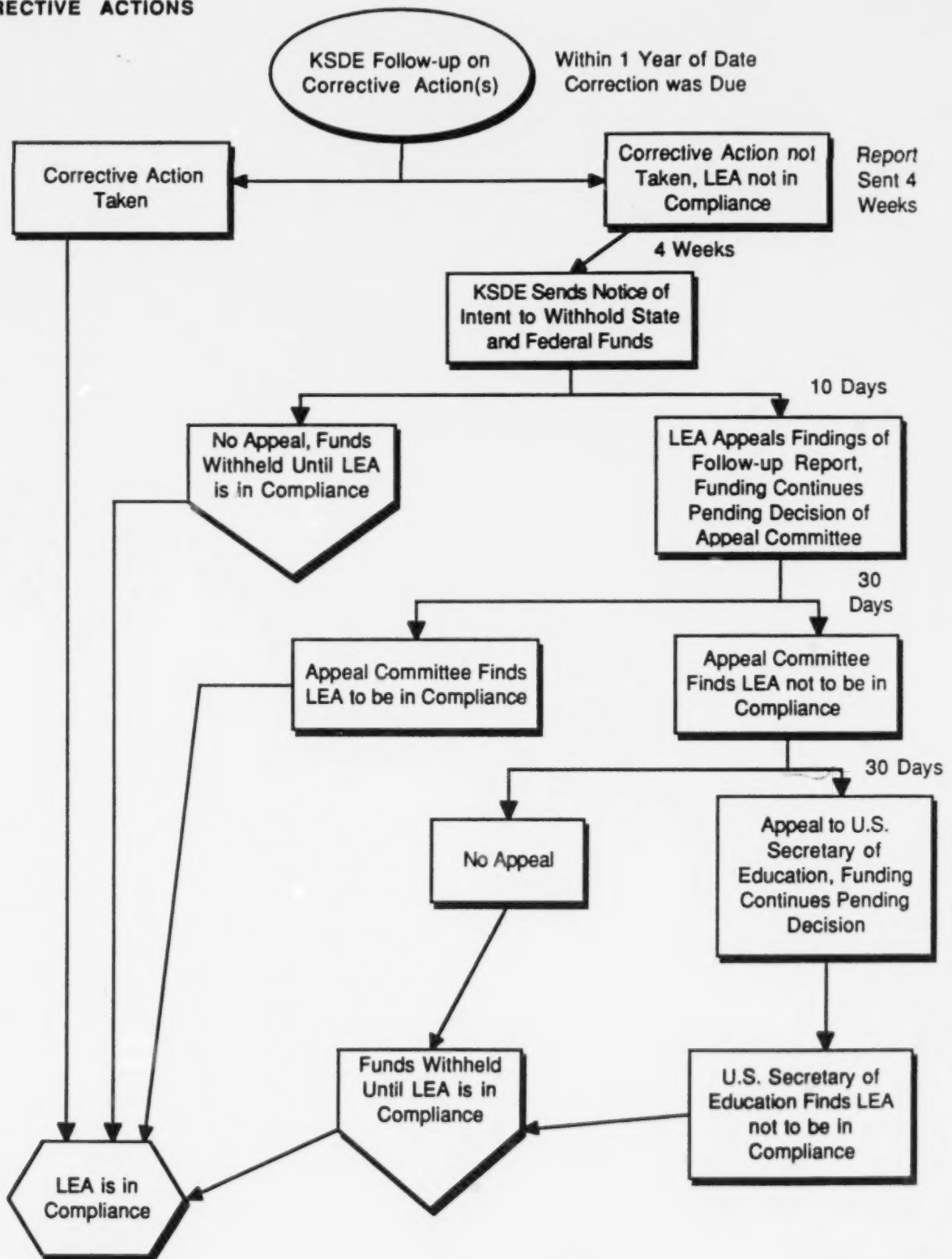
Compliance Records

Both the LEA and the KSDE shall routinely maintain records to sufficiently document compliance with the Federal and State requirements for special education programs. Such records shall be maintained for a period of at least five years. The KSDE files shall include copies of each document used in making compliance determinations, including working papers.

**COMPLIANCE
REPORT TIME LINES
Table 2**



**FOLLOW-UP ON
CORRECTIVE ACTIONS**



COMPLIANCE MONITORING CHECKLIST
Fiscal Year 1991

1.0. Free Appropriate Public Education (FAPE)

1.2. Each LEA shall make a free appropriate public education available to all exceptional children of school age within its jurisdiction. Developmental Special Preschools shall address ages 0-7.

Note: FAPE is defined in 34 C.F.R. 300.4 as "special education and related services which...are provided in conformity with an IEP".

20 U.S.C. 1401 Sec.3(c)
K.S.A. 72-966 and K.S.A. 72-933

1.3. Each exceptional student shall have the availability of all related services required for that student to benefit from special education. Related services include: art therapy, audiology, counseling services, dance/movement therapy, early identification and assessment, music therapy, occupational therapy, parent counseling and training, psychological services, physical therapy, recreation, school health services, school social work, special education administration and supervision, special music education, speech therapy, transportation, and medical services for diagnostic or evaluation purposes.

34 C.F.R. 300.300

34 C.F.R. 300.13

K.A.R. 91-12-60

1.3.1. LEAs shall be responsible for the provision of school health services, including procedures such as clean intermittent catheterization, which allow any student to be maintained in the least restrictive environment.

K.A.R. 91-12-60(c)

1.3.2. Occupational therapy, physical therapy, paraprofessionals, transportation and interpreters (for hearing impaired) shall be treated as special education services if any student's IEP indicates that the student cannot continue to function in regular education without the service(s).

K.A.R. 91-12-60(e)

1.2. Check prevalence figures in office prior to on-site. There is no waiting list for special education services.

Parents surveyed state that a free appropriate education in the least restrictive environment is available to all exceptional children and youth.

1.3. Parents surveyed state that their child receives necessary related services for him/her to benefit from special education.

There are no unresolved complaints or due process hearings regarding the provision of related services.

IEPs show no obvious discrepancies between disabilities identified by the comprehensive evaluation and related services provided. Such discrepancies must be investigated before any citation is given.

1.3.1. A random sample of IEPs indicate that appropriate health services are provided.

1.3.2. The LEA has a list of all students maintained in regular education through the provision of a related service or at least one student record/IEP must show such services are/were provided.

1.4. Exceptional students of school age shall be provided the same school day/school term (minimum 1080 hours or 180 days) as nonexceptional students in the same attendance center unless a shorter period of time is prescribed in a student's IEP. Handicapped children age five and under shall be provided 450 hours of instruction in a center based program, 215 hours of instruction in a home based program or any proportional combination of the two programs, unless a shorter period of time is prescribed in the child's IEP.

K.A.R. 91-12-22(kk)

1.5. The LEA shall provide special education and related services to three and four year old handicapped children on a proportionate basis if regular education is provided for non-handicapped children in that age group.

34 C.F.R. 300.300(b)(2)

1.6. The LEA shall make the same variety of educational programs and services available to exceptional students as are available to non-exceptional students, including vocational education, art and music.

34 C.F.R. 300.305

1.7. Instruction in physical education shall be provided, adapted if necessary, to each handicapped student.

34 C.F.R. 300.14(a)(1)

K.A.R. 91-12-66

1.7.1. The LEA shall afford each handicapped student the right to participate in the regular education program unless the student is enrolled full time in a separate facility or needs specially designed physical education.

34 C.F.R. 300.307(b)

1.7.2. The LEA responsible for the education of a handicapped student who is enrolled in a separate facility shall ensure that the student receives appropriate physical education services.

34 C.F.R. 300.307(c)

1.4. Parents surveyed state that their children receive the same school day/school term as nonexceptional students in the LEA.

The IEPs of students for whom the school day/term has been shortened contain a statement of the extent to which the day/term has been shortened and the student's records contain evidence that the parents have consented to this adjustment.

1.5. A comparison of services for three and four year old non-handicapped children shows that proportionate services are being provided to three and four year old handicapped children.

N.A. State Institutions and Youth Centers

1.6. A sample of student records shows that exceptional students are receiving the same services that are offered by the LEA to nonexceptional students.

1.7. A sample of student records shows that all handicapped students are receiving instruction in physical education.

1.7.1. The LEA has class rosters or other records verifying the participation of some handicapped students in regular physical education.

A review of records of moderately to severely handicapped students, especially those with physical handicaps verifies the provision of adapted physical education.

1.7.2. If the LEA has students enrolled in a separate facility, a review of a sample of IEPs indicates the provision of appropriate physical education or adapted physical education.

1.8. Specially designed vocational education services are included in the definition of special education and shall be made available to each handicapped student. These services include industrial arts, and consumer and homemaking education programs.

34 C.F.R. 300.14(a)(3)

K.A.R. 91-12-65(a)

1.9. Each LEA is required to refer (on a form developed by SRS) developmentally disabled students to the Vocational Rehabilitation Section of SRS at least two years prior to graduation or at least two years before attaining the age of 22.

K.S.A. 75-5372, et seq.

1.10. Each LEA shall ensure that any exceptional student whom it places in or refers to a private school or facility as a means of providing special education and related services shall be provided FAPE in a program that meets the standards of the State Board of Education and be afforded all of the rights of an exceptional student who is served in a public agency. Note: For such students the education program, including non-medical care and room and board, shall be provided at no cost to the parents of the student.

34 C.F.R. 300.401

34 C.F.R. 300.302

K.S.A. 72-933

K.S.A. 72-961 et seq

1.11. An LEA which provides special education and related services to pupils attending its schools shall provide on an equal basis the same services to every student who resides in the LEA; attends a private school within or outside of the LEA; and whose parents request the services. The services shall be provided on an equal basis with those provided to students attending the LEA's schools.

34 C.F.R. 300.452

K.S.A. 72-5393

1.12. The LEA shall implement procedures for providing information to the public, at least once a year, concerning the needs of exceptional students, the educational rights of

1.8. The IEPs of students age 13 or older indicate the consideration of vocational training.

1.9. The LEA has a list of SMH, D/B, P.I., TMH, Autistic, and S.S.I. students ages 16-20 who have been referred to SRS or the records of such students contain copies of completed referral forms.

1.10. The LEA has a list of students whom it has placed in a private residential school or facility. Parents of these students state that the education program, including non-medical care and room and board, is provided free of charge.

1.11. The LEA has a list of private schools in its jurisdiction and of private school students for whom it is providing special education and related services. A current IEP is on file for each of these students; and

The LEA has copies of correspondence verifying that private school administrators have been informed of the availability of services for exceptional students enrolled in their schools. N.A. Special Purpose and Youth Center Schools.

1.12. The LEA has current logs of activities and files of printed materials which verify efforts to provide information to the public on an annual basis. N.A. Special Purpose

these students, and the availability of special education and related services.

34 C.F.R. 300.220

K.A.R. 91-12-33

1.13. Each LEA shall ensure that the hearing aids worn by hearing impaired students (both regular and special education) are functioning properly. The aids shall be checked not less than once each week in the school and not less than once each year by an audiologist or hearing aid dealer.

34 C.F.R. 300.303

K.A.R. 91-12-53(c)

1.14. All public and private special education and related services programs shall meet State Board standards and criteria as follows:

34 C.F.R. 300.4

K.S.A. 72-966 & 970

1.14.1. Special education personnel shall be properly certificated and endorsed (subject and level) or licensed in their assigned areas of responsibility. *Note: Teachers assigned to classrooms for autistic students shall be approved on the basis of a special education endorsement most appropriate to the students' needs and functional and chronological age levels.*

34 C.F.R. 300.12

K.A.R. 91-12-56(c)

K.A.R. 91-12-23(a)(1) & (6)

1.14.2. Special education programs are in compliance with pupil/teacher ratios and age ranges established in Article 12 or an approved and current waiver is on file.

K.A.R. 91-12-23(a)(2)

1.14.3. Facilities for exceptional students are comparable to those provided to non-exceptional students within the same school building. If the LEA operates a facility solely for exceptional children, the facility and the services and activities provided shall be comparable to those provided to nonexceptional children.

and Youth Center Schools.

1.13. The LEA has written procedures for monitoring hearing aids and can document training in the procedures as necessary.

The LEA has a list of all students wearing hearing aids. A random sample of records of these students and logs of hearing aid checks verifies that hearing aids are being monitored as required, including the annual check.

1.14.1. Check Personnel Report prior to on-site visit. The LEA has no budgeted positions that are unfilled or that are filled by unapproved personnel.

If the LEA has positions that are unfilled or that are filled by unapproved personnel, it can provide documentation of recent staff recruitment efforts, e.g. proof of purchase or copies of nationwide job advertisements, correspondence with placement offices, and interview schedules at conferences.

1.14.2. Check Personnel Report prior to on-site for indication of excessive or significantly low enrollments. Also check list of current waivers. A sample of class rosters document compliance with pupil teacher ratios.

1.14.3. Investigation of complaints about facilities indicate that facilities are comparable to those provided to nonexceptional students in the same building.

All facilities for exceptional students are in age appropriate environments and each environment is appropriate for the instructional program being provided.

K.A.R. 91-12-23(a)(4)

K.A.R. 91-12-38

1.14.4. An approvable delivery model is used for special education programs.

K.A.R. 91-12-23(a)(8)

1.14.6. Special education instructional paraprofessionals shall not:

- a** be solely responsible for a classroom or a professional support or related service;
- b** select diagnostic or psychological instruments or interpret the results of those instruments;
- c** program or prescribe educational activities or materials for students without the supervision and guidance of the teacher;
- d** be solely responsible for preparing lesson plans or initiating original concept instruction;
- e** be assigned to work with one or more of the most difficult students for the majority of the school day merely for the convenience of the teacher.
- f** be employed in lieu of needed itinerant special education personnel;
- g** be used as a substitute teacher, unless he/she has an appropriate certificate; or
- h** be enrolled as an elementary or secondary school student.

K.A.R. 91-12-61(a)

1.14.7. School social work paraprofessionals shall perform tasks related to school social work, but shall not be involved in intervention techniques, such as psychotherapy.

K.A.R. 91-12-63(c)

1.14.8. The responsibilities of the school psychology paraprofessional shall be planned and supervised by a qualified school psychologist, and shall not include psychological counseling, therapy, or evaluation.

K.A.R. 91-12-62(e)

1.14.4. Programs are delivered in accordance with delivery models listed in K.A.R. 91-12-23 and defined in K.A.R. 91-12-22 or written KSDE approval for an innovative model is on file.

1.14.6. Job descriptions are written for paraprofessionals and contain appropriate duties.

1.14.7. Job descriptions indicate that the school social work paras are performing appropriate duties.

1.14.8. Job descriptions indicate that the school psychology paraprofessionals are performing appropriate duties.

1.14.9. Psychological evaluations done by school psychology practicum students placed in an LEA by a training institution may be used, and must be reviewed and signed by the supervising psychologist.

K.A.R. 91-12-62(c)

1.14.10. No more than three paraprofessionals, whether full or part time, shall be assigned to a single professional, except for IMC coordinators in which case 4 paraprofessionals are allowed.

K.A.R. 91-12-61(b)(3)

K.A.R. 91-12-64(d)(2)

1.14.11. A paraprofessional assigned to an itinerant professional may work with an exceptional student when the professional is not in the building only if the professional works directly with both that student and the paraprofessional at least twice a week. The exception is the speech/language paraprofessional who must be seen once a week. If the professional is not present each day, the paraprofessional shall be assigned to, and supervised by, a designated principal or regular classroom teacher.

K.A.R. 91-12-61(b)(4)

K.A.R. 91-12-53(d)(1)

1.15. Each gifted child shall be permitted to test out of required or prerequisite courses or work at his/her own rate if so specified in the student's IEP

K.A.R. 91-12-52(b)

1.17. Interrelated programs meet the following requirements:

- a. Teaching personnel with full endorsement in one of the categories being served; and
- b. Provision of consultative assistance from categorical specialists or support personnel as needed;

K.A.R. 91-12-25(a)

1.17.3. Maximum class size for "interrelated other" programs shall be determined on an individual basis.

K.A.R. 91-12-25(f)

1.14.9. The records of a sample of students who were evaluated by a practicum student show that the evaluation procedures were reviewed and signed by the supervising psychologist.

1.14.10. Check Personnel Report prior to on-site. Investigation of a sample of para/supervisor ratios shows that no more than 3 paras (except SEIMC programs) are supervised by one professional, or that a waiver is on file.

1.14.11. The LEA has a list of designated certified professionals who supervise itinerant paraprofessionals and the LEA has weekly schedules of itinerant professional and paraprofessional personnel to document simultaneous direct contact with students.

1.15. The LEA has procedures which provide that a gifted student may test out of required or prerequisite courses if so specified in the student's IEP.

1.17. The LEA has records for each interrelated program showing:

- a. Age range, and disabilities of students;
- b. Qualifications of staff; and
- c. Type(s) and amount (time) of consultation provided to the program.

1.17.3. Check prior approval applications regarding the types of students enrolled in all "interrelated other" programs operated by the LEA prior to the on-site. Review unusual/apparently inappropriate programs on-site and determine whether the IEPs of students placed in these programs are being implemented as written.

1.18. Developmental special preschools shall be licensed as a child care center by the Department of Health and Environment.
K.A.R. 91-12-27(b)(2)

2.0. Confidentiality

2.2. The LEA shall afford the rights of confidentiality to students age 18 or older unless the student has been legally adjudicated to be an incapacitated person or under the jurisdiction of a court as a child in need of care.

34 C.F.R. 300.574

K.A.R. 91-12-44(d)

2.3. Each LEA shall annually notify parents and eligible students of their rights under FERPA and Part B, EHA.

34 C.F.R. 99.7(a)

2.4. The LEA shall permit parents to review and inspect educational records relating to their children without unnecessary delay (in no case more than 45 days) and before any IEP meeting or hearing relating to identification, evaluation, or placement, of a student.

34 C.F.R. 300.562(a)

2.5. The right to inspect and review educational records shall include:

2.5.1. a response to reasonable requests for explanations, and interpretations.

34 C.F.R. 300.562(b)(1)

2.5.2. copies of the records at reasonable cost or at no cost if the fee or failure to provide copies would effectively prevent the parent from inspecting and reviewing the records.

34 C.F.R. 300.566(a)

34 C.F.R. 300.562(b)(2)

2.5.3. allowing a representative of the parent to inspect and review the records.

34 C.F.R. 300.562(b)(3)

1.18. Each developmental special preschool has a current certificate of licensure as a child care center.

2.2. The LEA has records documenting that confidentiality rights are afforded to students age 18 and older unless such students have been adjudicated to be incapacitated or a child in need of care, e.g. copies of notices sent to eligible students.

2.3. The LEA has copies of materials used to notify parents of students currently enrolled about confidentiality rights. Dates indicate that this notice is given annually. *Note: A general notification by newsletter or bulletin, student/parent handbook, or publication in local newspaper(s) satisfies this requirement.*

2.4. Parents surveyed state that they were given timely access to their child's educational records and no complaints regarding the matter are on file at KSDE or the LEA has records showing when access was requested and when it was given.

2.5.1.-2.5.3. No complaints regarding these issues are on file at KSDE or are reported by parents at the on-site. *Note: The LEA may presume a parent has the right to inspect and review his/her child's records unless advised that the parent does not have authority under applicable guardianship/custody state laws.*

2.6. If records include information on more than one child, parents shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

34 C.F.R. 300.564

34 C.F.R. 99.12(a)

2.7. The LEA shall keep a record of parties obtaining access to education records (except parents and authorized employees) including name, date and purpose.

34 C.F.R. 300.563

34 C.F.R. 99.32

2.8. The LEA shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the LEA.

34 C.F.R. 300.565

2.9. The LEA may not charge a fee to search for or to retrieve information.

34 C.F.R. 300.566(b)

2.10. If a parent believes that information in the records is inaccurate, misleading or violates the rights of the child, and requests that the records be amended, within a reasonable period of time, the LEA either makes the requested amendments or informs the parent that the request is refused and advises him/her of the right to request a hearing to challenge the information in question.

34 C.F.R. 300.567

34 C.F.R. 300.568

2.11. If a hearing is held to provide the parent with an opportunity to challenge information in educational records, the LEA shall:

2.11.1. Hold the hearing within a reasonable time following the parent's request;

34 C.F.R. 99.22(a)

2.6. If any individual student record reviewed by the monitor contains information on more than one student, procedures used by the LEA to insure that this information is protected must be investigated.

2.7. The LEA has, at building level, a record of the persons (other than parents and authorized LEA personnel) who have accessed each student's records, including the dates and reasons for access. *Note: Monitors are required to sign, date, and give reason for access to student records.*

2.8. The LEA has a list showing the types and locations of educational records and parents surveyed state that they were provided such a list on request.

2.9. Parents surveyed state that they were not charged any fee for a search or for a retrieval of information in their child's educational records.

2.10. The LEA identifies at least one case in which it refused to amend records as requested. Written materials (e.g. results of the hearing) or parent interview information document that the parent had an opportunity for a hearing. If the LEA claims never to have received a request to conduct a hearing to challenge the content of records, this should be noted in the on-site report. Skip to 2.16.

2.11.1 No more than ten calendar days elapsed between the date notification of the hearing was given and the date the hearing was held. *Note: Corrective action should not be given if the timeline is extended by mutual agreement or by circumstances beyond the control of the LEA.*

2.11.2. Give the parent notice of the date, time and location reasonably in advance of the hearing;

34 C.F.R. 99.22(b)

2.11.3. Appoint an individual to conduct the hearing who may be an official of the LEA, but who does not have a direct interest in the outcome of the hearing;

34 C.F.R. 99.22(c)

2.11.4. Give the parent full and fair opportunity to present evidence relevant to the issues; and allow parents, at their own expense, to be assisted or represented by individual(s) of their choice, including an attorney;

34 C.F.R. 99.22(d)

2.11.5. Within a reasonable time after the hearing, parents shall be informed, in writing, of the decision. The decision must include a summary of the evidence, the reasons for the decision, and be based solely upon the evidence presented at the hearing.

34 C.F.R. 99.22 (e) and (f).

2.12. If, as a result of the hearing, the LEA decides to amend the the records, it does so and informs the parents in writing.

34 C.F.R. 300.569(a)

2.13. If, as a result of the hearing, the LEA decides not to amend the records, it informs the parents of their right to place in the records a statement commenting on the information or reasons for disagreeing with the LEA's decision. Any parental statement challenging or disagreeing with the content of the records is maintained as a part of the records and is disclosed to any party to whom the rest of the records are disclosed.

34 C.F.R. 300.569 (b) and (c)

2.11.2. The LEA has a copy of the written notice which includes date, time and location. The dates on this correspondence indicate that the notice was given at least ten calendar days in advance of the hearing. If notice was given orally, the parent must be interviewed.

2.11.3. The individual appointed to conduct the hearing was neither employed in the student's attendance center nor directly associated with the student or the LEA's special education program.

2.11.4. Parent interview verifies that the parents had full and fair opportunity to present evidence relevant to the issues; and that the parents were allowed to be assisted or represented by individual(s) of their choice, including an attorney.

2.11.5. Dates on correspondence verify that the parents were informed in writing, of the decision within ten calendar days after the hearing. This notification includes a summary of the evidence and the reasons for the decision and the decision seems to be the logical result of the evidence described.

2.12. The LEA shows at least one student record that has been amended as requested by the parent as a result of a hearing. Written material or parent interview information documents that the amendment was made as requested.

2.13. The LEA shows at least one student record that includes a statement by the parent commenting on disputed information or reasons for disagreeing with the decision.

2.15. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than authorized education officials or used for any purpose other than meeting a requirement under the Education of The Handicapped Act . In the event that a parent refuses to provide consent for disclosure, identifiable information shall not be disclosed. *Note: Authorized persons/agencies include:*

a. Other school officials whom the LEA has determined to have legitimate educational interest;

b. Another school, including post secondary schools, where the student seeks or intends to enroll; and

c. Authorized local, state or federal education authorities.

34 C.F.R. 300.571

34 C.F.R. 99.31(a)(1)-(3)

2.17. All persons collecting or using confidential information receive training regarding confidentiality policies and procedures under EHA, B and FERPA.

34 C.F.R. 300.572(c)

2.18. The LEA shall maintain a current list of its employees who may have access to personally identifiable information.

34 C.F.R. 300.572(d)

2.19. The LEA shall inform parents when records containing personally identifiable information are no longer needed to provide educational services for their child and will be destroyed.

34 C.F.R. 300.573(a)

2.15. The LEA has a form for obtaining parental consent to disclose data and can produce one such form that has been signed by a parent. Consent : (1) specifies the records to be disclosed; (2) states the purpose of the disclosure; and (3) identifies the party(ies) to whom disclosure will be made.

2.17. The LEA has records (e.g. training agendas, training materials, lists of persons trained) which document that, at a minimum, training regarding confidentiality policies and procedures is conducted for all new personnel collecting or using confidential information about exceptional students. Regular education personnel and support staff who collect or use confidential information about exceptional students are included in this requirement.

2.18. The LEA has a list showing the names and positions of employees who may have access to confidential records. The list specifies that only staff with a need to know may access student records.

2.19. The LEA has correspondence or other records showing that parents have been notified when their child's records are no longer needed and will be destroyed.

2.20. If the LEA keeps personally identifiable information which is no longer needed, it shall be destroyed at the request of the parent, except that the student's name, address, phone number, grades, attendance, classes attended, grade level completed and year completed may be maintained without time limitation. *Note: Personally identifiable information may be retained by the LEA permanently unless destruction is requested by the parent.*

34 C.F.R. 300.573

3.0 Screening

3.1. Screening procedures are systematic and ongoing.

34 C.F.R. 300.128

34 C.F.R. 300.220

K.A.R. 91-12-40(a)

3.2. Screening for school age students includes:

3.2.1. Hearing screening for each student during the first year of admission and not less than every three years thereafter. Parents shall be notified of the results of the screening.

K.S.A. 72-1205

K.A.R. 91-12-40(b)(1)(A)

3.2.2. Vision screening for each student not less than once every two years. Parents shall be notified of the results of the screening.

K.S.A. 72-5205

K.A.R. 91-12-40(a)(1)(A)

3.2.3. Age appropriate developmental instrument(s)/procedure(s) designed to identify possible physical, intellectual, social, emotional, language or perceptual deviations.

K.A.R. 91-12-40(a)(1)(B)

2.20. The LEA has correspondence or other records showing a positive response to parental requests to destroy records. If the LEA claims never to have received a request to destroy records, this should be noted in the on-site report.

3.1. The LEA has records to document that screening procedures are conducted on a regularly scheduled basis and that show (1) the types of information obtained and (2) how this information is used.

3.2.1. The dated results of hearing screening are found in a sample of student's records and show that screening was conducted during the first year of admission to the LEA and not less than every three years thereafter or the LEA has a list showing the dates and names of students screened during the past three years which verifies that the mandatory screening is being conducted. The records include documentation of the notification to parents of the results (both positive and negative) of the hearing screening.

3.2.2. The dated results of vision screening are found in a sample of student's records and show that screening is conducted not less than every two years or the LEA has a list showing the dates and names of students screened during the past two years which verifies that the mandatory screening is being conducted. The records include documentation of the notification to parents of the results (both positive and negative) of the vision screening.

3.2.3. The LEA has a list showing the dates and names of students screened during the past two years which verifies the systematic use of age appropriate procedures (e.g. review of group tests).

3.3. Preschool screening procedures are undertaken at least once a year to identify children age 5 and under who may need special education.

34 C.F.R. 300.128

K.A.R. 91-12-40(b)(1)

3.4. Preschool screening procedures use developmental or age appropriate instruments or measures for all of the following:

3.4.1. Hearing screening including testing middle ear function and behavioral audiometry.

K.A.R. 91-12-40(b)(2)(A)

3.4.2. Basic vision screening, including behavioral and observational signs of vision problems.

K.A.R. 91-12-40(b)(2)(B)

3.4.3. Developmental screening which does not depend entirely on interview information, group tests, or intelligence testing and includes:

- a. Communication skills
- b. Gross and fine motor skills
- c. Cognition
- d. Social and emotional adjustment
- e. Self-help skills

K.A.R. 91-12-40(b)(2)(C)

3.5. Activities shall be conducted to publicize preschool screening.

K.A.R. 91-12-40(b)(3)

3.3. Announcements and logs show that preschool screening activities are conducted at least once a year.

3.4.1. The LEA has a current roster of birth-5 children who were tested using an impedance bridge and the dated results of impedance testing (tympanogram or a record of whether the child met criteria for normal hearing) are found in a sample of student records.

For children who are under 2 years of age or who have severe handicapping conditions, screening records show that toy testing, free field testing or other behavioral audiometric techniques were used.

3.4.2. A behavioral/observational checklist is used to screen vision. The LEA has a current roster of preschool children who were screened using this instrument or a record of whether the child met criteria for normal vision is found in a sample of student records.

3.4.3. Rosters and a sample of student files include the results of norm or criterion referenced instruments developed for the purpose of assessing the developmental levels for children of the age being screened, including:

- a. speech/language and/or communication
- b. fine and gross motor functioning
- c. cognitive functioning
- d. social/emotional functioning *Note: Structured interview of the parent and observation of the child may be used.*
- e. achievement in age-appropriate self help skills

3.5. Copies of print announcements and logs of presentations are available. Dissemination procedures are sufficient to reach most of the LEA's patrons.

3.6. After each preschool screening:

3.6.1. Local and statewide resources shall be recommended to parents and records sent to the recommended resources as appropriate; and

K.A.R. 91-12-40(b)(4)(A)

3.6.2. Records on each child screened shall be maintained and summary data submitted to KSDE.

K.A.R. 91-12-40(b)(4)(B) and (C)

3.7. No student enrolled in regular education shall be identified as exceptional until a preassessment team has :

3.7.1. Documented that age and ability level learning experiences have been presented to the student ;

3.7.2. Documented that the student's potential for learning has not been achieved in the regular education environment; and

3.7.3. Completed a record of the dates the preassessment team met, the names and positions of preassessment team members, and the team's recommendations.

K.A.R. 91-12-40(c)

4.0 Comprehensive Evaluation

4.3. Whenever screening, referral or lack of progress or preassessment indicates that a student may be exceptional, a comprehensive evaluation shall be initiated.

K.A.R. 91-12-40(d)

4.4. Each comprehensive evaluation shall be completed within 40 school days following referral. *Note: A citation may not be given if the referral was made prior to November, 1987.*

K.A.R. 91-12-40(d)(8)

4.5. Prior to any action regarding the initial placement of a student in a special education program, a comprehensive evaluation shall be conducted in accordance with the requirements of K.A.R. 91-12-40 and 34 C.F.R. 300.530-534.

34 C.F.R. 300.530

K.A.R. 91-12-40(d)

3.6.1. The LEA has records of communications telling parents about recommended services and records of communications regarding referrals to recommended agencies; and

3.6.2. Records of children screened since the last on-site visit .

3.7 The files of students placed in special education since 1984 include:

3.7.1. Records of age/ability appropriate interventions tried in the regular classroom;

3.7.2. Records of appropriate preassessment interventions and the effect of these interventions on the student's performance; and

3.7.3. Names and positions of members of the preassessment team, dates the preassessment team met, and the team's recommendations. N.A. for Special Purpose and Youth Center Schools.

4.3. Parents or staff interviewed/surveyed indicate that the LEA is in compliance with this requirement.

4.4. A sample of student records contain the date of referral and the date of the staffing which was conducted following completion of the comprehensive evaluation. The staffing was held no more than 40 school days after the student was referred.

4.5. A summary of the results of the preplacement evaluation is found in a sample of records of students receiving special education and related services.

4.6. Testing and other evaluation materials and procedures shall be:

4.6.1. Selected and administered so as not to be racially or culturally discriminatory;

34 C.F.R. 300.530(b)

K.A.R. 91-12-40(d)(1)

4.6.2 Provided and administered in the student's native language or other mode of communication unless it is clearly not feasible to do so; and

34 C.F.R. 300.532(a)(1)

4.6.3. Validated for the specific purpose for which they are used.

34 C.F.R. 300.532(a)(2)

K.A.R. 91-12-40(d)(4)

4.6.4. Administered by trained personnel in conformance with the instructions provided by their producer.

34 C.F.R. 300.532(a)(3)

K.A.R. 91-12-40(d)(4)

K.A.R. 91-12-40(d)(5)

4.7. When English is not the principal language of the home, the language best understood by the student shall be determined prior to testing. The comprehensive evaluation or access to special education shall not be postponed solely because a student does not communicate effectively in English.

K.A.R. 91-12-40(d)(1)(A)

4.9. Psychological evaluations shall be carried out by KSDE endorsed school psychologists or appropriately trained psychologists licensed by the State.

K.A.R. 91-12-40(d)(5)

4.6.1. and 4.6.2. The LEA has examples of alternative evaluation materials and procedures which it has used (or is prepared to use) to assess racially and culturally different students or students with communicative disabilities. An alternative procedure might include the use of qualified bilingual diagnostic staff and/or translators and interpreters.

4.6.3. In a sample of student records, IEP goals/objectives and placement decisions are supported by appropriate testing materials and procedures, i.e. achievement tests have not been used to assess cognitive skills, group tests have not been administered as individual tests.

4.6.4. In a sample of student records, test protocols and staffing summaries indicate that evaluation materials/procedures were administered by qualified personnel in conformance with instructions provided by the producer. There should be a "match" between the purpose of the test/procedure and the endorsement/licensure of the person doing the assessment.

4.7. The LEA has records of students from non-English speaking homes that contain a statement of the language best understood by the student. There has been no apparent delay in conducting a preplacement evaluation or in providing needed special education services.

4.9. The names of all persons shown in student records as psychological evaluator are found in the current Personnel Report.

4.10. No single procedure may be used as the sole criterion for determining the appropriate educational program for a student. Each student shall be assessed in all areas related to the suspected exceptionality, including where appropriate: health, vision, hearing, social and emotional status, general intelligence, academic performance, communication skills, motor abilities, and vocational skills.

34 C.F.R. 300.532(d)

34 C.F.R. 532(f)

K.A.R. 91-12-40(d)(2) and (6)

4.11. Tests used in the comprehensive evaluation shall assess specific areas of educational need. The results of the comprehensive evaluation may not rely exclusively upon tests designed to provide a single general IQ.

34 C.F.R. 300.532(b)

K.A.R. 91-12-40(d)(2)

4.12. Tests administered to a student with impaired sensory, manual or communication skills must accurately reflect the factors the test purports to measure (aptitude, achievement, etc.) rather than reflecting the student's impaired sensory, manual or speaking skills, unless those skills are the factors which the test purports to measure.

34 C.F.R. 532(c)

K.A.R. 91-12-40(d)(1)(B)

4.13. The evaluation shall be made by a multidisciplinary team, including at least one person with knowledge in the area of the suspected exceptionality.

34 C.F.R. 300.532(e)

K.A.R. 91-12-40(d)(2)

4.10. A sample of student records include staffing summaries, test results or screening results documenting assessment in all of the following developmental domains: health, vision, hearing, social and emotional status, general intelligence, academic performance, communication skills, motor abilities, and for students over age 13, vocational skills.

4.11. In a sample of student records test results are found for at least one developmental domain other than general intelligence as measured by an individual intelligence test.

4.12. In a sample of records of students with impaired sensory, manual, or communication skills, procedures used to assess general intelligence, and achievement take into account and are not biased by the student's sensory impairment.

4.13. In a sample of student records, staffing summaries include:

a. The names of persons from more than one discipline (e.g. school psychologist, special education teacher, regular teacher, physical therapist, speech clinician, etc.) who participated in the evaluation. (See 7.13.3. for exception when student's only apparent disability is a speech impairment:) and

b. The names of at least one person with knowledge in the area of the suspected exceptionality who participated in the evaluation.

4.15. MENTAL RETARDATION

Additional procedures for identifying students as MR shall include:

- a. A standardized test of adaptive behavior showing that the student exhibits deficit behavior in more than one setting and
- b. An individual intelligence test score at least two standard deviations below the mean.

K.A.R. 91-12-22(x)

K.A.R. 91-12-54(a)

4.16. LEARNING DISABILITIES

Additional procedures for identifying students as LD shall include:

4.16.1. Evaluation by a multidisciplinary team including either the student's teacher or a regular teacher qualified to teach a student of that age;

34 C.F.R. 300.540(a)

K.A.R. 91-12-58(a)(1)

4.16.2. If the intellectual functioning of a student is more than two standard deviations below the mean of the individual intelligence test, a written statement by the individual responsible for assessing intellectual functioning giving the specific data which support a supposition that the IQ measure is suspect and that the student is functioning within the stated criterion.

34 C.F.R. 300.541(b)(2)

K.A.R. 91-12-58(a)(2)

4.16.3. Observation of academic performance in the regular classroom by a team member (other than the student's regular class teacher) who is trained to use observation as a diagnostic procedure. For preschool or out-of school students, the observation shall be made in an age appropriate setting

34 C.F.R. 300.542(a) and (b)

K.A.R. 91-12-58(a)(3)

4.16.4. Documentation of a significant discrepancy between students' current achievement and aptitude according to the regression formula or the simple standard score differences as prescribed in the Kansas LD Guidelines.

K.A.R. 91-12-58(a)(4)

4.15. A sample of records of students identified as MR include:

- a. The results of a standardized test of adaptive behavior showing that the student exhibits deficit behavior in more than one setting and;
- b. An individual intelligence test score at least two standard deviations below the mean.

4.16. A sample of records of students identified as LD include:

4.16.1. Documentation (e.g., staffing summary or team report) that the student's regular teacher was a member of the evaluation team. If the child is not enrolled in regular education, a regular education teacher qualified for his/her age/grade level must be a team member;

4.16.2. If the intellectual functioning of a student, as measured by the full or total scale of an individual intelligence test, is more than two standard deviations below the mean of the individual intelligence test, a statement by the person who assessed general intelligence justifying the supposition that the IQ measure is suspect and that the student is functioning within the stated criterion, i.e., is not mentally retarded must be on file.

4.16.3. A record of an observation of educational performance in the regular classroom by a team member (other than the student's regular class teacher) who is trained to use observation as a diagnostic procedure. For preschool or out-of school students, the observation shall be performed in an age appropriate setting.
Note: Persons with special education endorsement(s) are assumed to be qualified.

4.16.4. Work papers showing calculation of the discrepancy between ability and achievement.

4.16.5. In cases where significant discrepancy criteria are not met (over ride of formula), a written statement by the team including:

- a.** the assessment procedures used;
- b.** assessment results;
- c.** criteria used to judge the importance of any difference between expected and current achievement; and
- d.** reasons for believing that a severe discrepancy exists that is not correctable without special education.

K.A.R. 91-12-58(a)(5)

4.16.6. A written report by the team which includes:

- a.** A statement that the student has been presented with age/ability appropriate learning experiences and has failed to learn;
- b.** whether there is a significant discrepancy between aptitude and achievement;
- c.** determination of team regarding effects of environmental, cultural or economic disadvantage;
- d.** relevant behavior noted during observation;
- e.** relationship of that behavior to academic functioning;
- f.** any educationally relevant medical findings;
- g.** whether the student has a learning disability that is not correctable without special education or related services;
- h.** a written statement for each team member that the report reflects his/her conclusions; and
- i.** separate written statements of dissenting opinions, if any.

K.A.R. 91-12-58(a)(6)

34 C.F.R. 300.543

4.16.5. In cases where the significant discrepancy criteria are not met, student folders contain a team report which includes:

- a.** a description of the assessment procedures used;
- b.** the results of the assessment;
- c.** a statement of the criteria used by the team to make judgements about the importance of any difference between expected and current achievement; and
- d.** the reasons for believing that a severe discrepancy exists that is not correctable without special education.

4.16.6. The records of students identified as LD contain a team report with all of the items a through i as listed in 4.16.6.

4.17. SPEECH/LANGUAGE

Additional procedures for identifying students as speech/language impaired shall:

a. Include assessment of articulation, language, fluency and voice;
K.A.R. 91-12-53(b)

b. Establish that the communication deviation/impairment adversely affects educational performance;
K.A.R. 91-12-22(u)

c. For students who have a speech impairment as their only apparent exceptionality: if the comprehensive evaluation consists only of a diagnosis and appraisal of speech/language disorders by a qualified speech language clinician, that clinician shall verify the absence of other learning or behavioral problems through examination of records and/or conferences with teachers and parents.
K.A.R. 91-12-40(d)(6)

4.18. HEARING IMPAIRED Additional procedures for identifying students as hearing impaired shall include assessment of auditory acuity and perception which establishes a loss of auditory functioning sufficiently severe as to affect ability to communicate with others or to develop communicative or learning skills.
K.A.R. 91-12-22(l)
K.A.R. 91-12-53(b)

4.19. GIFTED Additional procedures for identifying students as gifted shall include:
a. Teacher evaluation;

b. Analysis of student's accomplishments and products; and

c. A minimum composite rank of 97th percentile on national or local norms, whichever is higher, for standardized individual intelligence test or evidence that the test doesn't reflect true potential.

4.17. The records of students identified as speech/language impaired include:

a. The results of a standardized test(s) of articulation, language, fluency, and voice. Severity ratings should be recorded. They must be reported on the MIS.

b. Preassessment data showing that the language impairment adversely affects academic and/or social performance in the classroom and cannot be corrected without speech therapy. *Preassessment is not required for students with articulation problems as their only apparent disability.*

c. The LEA has written documentation (preassessment data, summaries of conferences with teachers or review of records) that the clinician has verified the absence of other learning or behavioral problems

4.18. The records of students identified as hearing impaired include the report of a medical work-up/audiometric assessment, including discrimination testing, other relevant medical findings, and recommendations regarding the need for auxiliary hearing equipment and interpreters.

4.19. The records of students identified as gifted include:

a. The results of an evaluation of school performance by the student's teacher, e.g., observation of social interactions, informal academic assessments;

b. A description/listing of accomplishments and products with statements as to why they indicate that the student is gifted and in need of special education;

c. A composite score at the 97th percentile on a standardized individual intelligence test or evidence that the test score doesn't reflect the student's true potential. If local norms are used, norming data must be available;

d. For elementary students, a composite rank of 95th percentile on standardized achievement test or evidence test doesn't reflect true potential.

e. For secondary students, a rank of not less than 95th percentile on national norms on two or more of the math, language arts, science, or social science sections, or evidence that the test doesn't reflect true potential.

K.A.R. 91-12-52

4.20. VISUALLY IMPAIRED

Additional procedures for identifying a student as visually impaired shall include:

a. Information about recommended treatment or correction resulting from an examination by an eye specialist; and

K.A.R. 91-12-59(a)

b. Evidence that the student's limited vision interferes with educational and/or developmental progress.

K.A.R. 91-12-22(tt)

4.21. BEHAVIOR DISORDERS

Additional procedures for identifying students as behavior disordered include:

a. Results of a behavior rating scale designed to identify BD students.

b. Classroom observation of educational performance by a team member (other than the student's regular classroom teacher) who is trained to use observation as a diagnostic procedure. For preschool or out-of school students, the observation is made in an age appropriate setting;

c. Procedures for determining the need for a mental health consultation and provision of this consultation if necessary; and

d. Evaluation data showing that the student has one or more behavioral characteristics that are:

d. for elementary students, composite rank of 95th percentile on standardized achievement test or evidence test doesn't reflect true potential.

e. For secondary students, a rank of not less than 95th percentile on national norms on two or more of the math, language arts, science, or social science sections or evidence test doesn't reflect true potential. *Note: Monitor should ask to see the records of a sample of elementary and secondary students who did not meet the criteria, but who were identified as gifted.*

4.20. A sample of records of students identified as visually impaired include:

a. Information about recommended treatment or correction resulting from an examination by an eye specialist including prognosis; information about near and distant acuity, with and without correction; field of vision; and primary and secondary etiologies; and

b. Records of assessment by a certified teacher of visually impaired of functional vision, orientation and mobility skills which indicate that the visual impairment interferes with the student's educational and/or developmental progress.

4.21. The records of students identified as behavior disordered include:

a. The results of a behavior rating scale designed to identify BD students;

b. A record of a classroom observation of educational performance by a team member (other than the student's regular class teacher) who has been trained to use observation as a diagnostic procedure. For preschool or out-of school students, the observation has been made in an age appropriate setting;

c. If a mental health consultation is not included in the evaluation procedures, a written statement of the procedures used to determine that it was not needed. Procedures in the LEA's local plan should be followed; and

d. The results of the behavior rating scale document that the student's behavior:

1. Exhibited at either a much higher or much lower rate than is appropriate for his/her age

2. Documented as occurring over an extended period of time in different environmental settings within the school, and home or community; and

3. Interfering consistently with the student's educational performance. This interference with educational performance shall not be a result of intellectual, sensory, cultural, or health factors that have not received appropriate attention.

K.A.R. 91-12-22(c)

K.A.R. 91-12-55(a)(3)

4.22. PHYSICALLY OR OTHER HEALTH IMPAIRED

Additional procedures for identifying a student as physically or other health impaired include:

a. Evaluations by qualified health providers to determine conclusively whether a physical or health impairment exists;

b. Evaluation results which show that the student has a physical condition that interferes with participation in educational experiences and/or adversely affects educational performance.

K.A.R. 91-12-22(y)

K.A.R. 91-12-22(aa)

K.A.R. 91-12-56(a)(2)

4.23. DEAF-BLIND Additional procedures for identifying a student as deaf/blind shall include:

a. Additional specialized tests by medical personnel, as necessary

b. Documentation that one dominant impairment (e.g. cerebral palsy, deafness or blindness) does not prevent the assessment and identification of other impairments.

1. Deviates significantly from the norm for his/her chronological age peers;

2. Case histories, observations, and/or other evaluation data show that the deviant behaviors have occurred over an extended period of time and in multiple settings; and

3. Grades and/or informal and formal tests of academic performance indicate unsatisfactory educational performance. Screening, preassessment, and evaluation results rule out intellectual, sensory, cultural, and health factors as the reason for this unsatisfactory performance.

4.22. The records of students identified as physically or other health impaired include:

a. Medical records confirming the presence of a physical or health impairment; and

b. Test results and/or screening data as required to determine a need for special education or related services and evaluation results which show that the student's physical condition interferes with participation in regular or special education programs

4.23. The records of students identified as deaf/blind include:

a. Tests by medical personnel, as necessary; and

b. Documentation that one dominant impairment (e.g. cerebral palsy, deafness or blindness) does not prevent the assessment and identification of other impairments; and

c. Evaluation results that document a combination of auditory and visual impairments which cause such severe communication and other developmental and educational problems that the student cannot be accommodated in special education programs solely for the hearing impaired or the visually impaired.
K.A.R. 91-12-22(f)
K.A.R. 91-12-57

4.24. SMH Additional procedures for identifying a student as severely/multiply handicapped shall include:

a. additional specialized tests by medical personnel, as necessary;

b. documentation that one dominant impairment (e.g. cerebral palsy, deafness or blindness) does not prevent the assessment and identification of other impairments;

c. Evaluation results documenting severe to profound functional retardation in conjunction with severe sensory disabilities, motor disabilities, severe emotional disturbance, chronic health conditions, or severe communication disorders.

K.A.R. 91-12-22(II)

K.A.R. 91-12-57

4.26. AUTISTIC Additional procedures for identifying a student as autistic include documenting that the following criteria are met

a. Onset of autistic characteristics before 30 months of age;

b. Pervasive lack of responsiveness to other people and to the environment;

c. Gross deficits in speech and language development; and

d. Absence of delusions, hallucinations, loosening of associations, and incoherence as are typical in schizophrenia.

K.A.R. 91-12-56(b)(1)

5.0. Individualized Education Program

5.1. The LEA shall maintain records for the Individualized Education Programs (IEPs)

c. Evaluation results that document a combination of auditory and visual impairments which cause such severe communication and other developmental and educational problems that the student cannot be accommodated in special education programs solely for the hearing impaired or the visually impaired.

4.24. The records of students identified as severely/multiply handicapped include:

a. Tests by medical personnel, as necessary;

b. Documentation that one dominant impairment (e.g. cerebral palsy, deafness or blindness) does not prevent the assessment and identification of other impairments;

c. Evaluation results documenting severe to profound functional retardation in conjunction with severe sensory disabilities, motor disabilities, severe emotional disturbance, chronic health conditions, or severe communication disorders.

4.26. Records of students identified as autistic include reports by members of the multidisciplinary evaluation team that document the presence of autistic characteristics before 30 months of age. Verification of the diagnosis of autism by a physician or psychiatrist is preferred. *Note: A student may be identified as autistic even though he/she is not currently exhibiting all the characteristics of autism, if the student once exhibited all the characteristics of autism and currently is unable to benefit from education without special education and related services.*

5.1. and 5.2. In a random sample of student records, a current IEP is on file for each

which are developed and implemented for each student for whom a determination is made that the student is exceptional and in need of special education services.

34 C.F.R. 300.341(a)

34 C.F.R. 300.533(b)

K.A.R. 91-12-41(a)

5.2. The LEA shall initiate and conduct annual meetings to develop, review and revise a student's IEP. The IEP is in effect at the beginning of the school year.

34 C.F.R. 300.343(a) and (d)

K.A.R. 91-12-41(b)

5.3. For students placed in or referred to a private school or another accredited or approved special education program through a contractual agreement, the LEA shall initiate and conduct conferences to develop, review and revise the IEP. After the student enters the other program, IEP meetings may be initiated and conducted by the receiving LEA.

34 C.F.R. 300.347(a)

34 C.F.R. 300.348(a)

K.A.R. 91-12-41(h)

5.3.1. Both the sending agency and the parents shall agree to any proposed changes in the IEP before those changes are implemented.

34 C.F.R. 300.347(b)(2)(ii)

K.A.R. 91-12-41(h)(i)(1)

5.3.2. The LEA shall ensure that the parents of the student and a representative of the receiving agency participate in each IEP conference. If the parents or representative are unable to attend other methods to ensure participation are used.

34 C.F.R. 300.347(b)(2)

34 C.F.R. 300.348(b)

K.A.R. 91-12-41(h) & (i)(2)

5.5. For any exceptional student who is referred to or placed by an LEA in a State School, a representative from the State School shall be included in the initial IEP meeting with the parent and LEA personnel. The LEA shall

student. *Note: An IEP may cover only the extended year program which occurs during the summer, as long as a current IEP is in place before the school year begins.*

5.3. LEA files contain a current IEP for each exceptional student enrolled in a private school or another accredited or approved special education program.

5.3.1. These IEPs contain signatures of parent(s), representatives of both the sending and receiving agency OR evidence of attempts to obtain agreement prior to changes in the IEP being implemented.

5.3.2. Files (telephone logs or written correspondence) document attempts to enlist the participation of all parties prior to implementing changes in the IEP.

5.5. LEA files document the participation (signature on IEP, written correspondence, or telephone log) of a representative from the State School in any initial IEP meeting. LEA files document (signature on IEP, written

participate with the parents and State school personnel in review or revision of the IEP in a meeting which, at the discretion of the LEA, may be initiated by the State school.

K.A.R. 91-12-30 (b)(4) and (8)

5.6. The IEP shall be in effect before special education and related services are provided to a student.

34 C.F.R. 300.342(b)(1)

K.A.R. 91-12-41(a)

5.7. An interim IEP may be developed to allow temporary special education placement of an exceptional student before the placement is finalized only when:

a. The student has been receiving special education in another agency and moves to the LEA and the current IEP is not immediately available; or

b. An interim IEP is developed which sets out the specific conditions and timelines for the trial placement;

c. The student's parents give written consent to the interim placement before it is carried out;

d. A specific timeline, not exceeding 30 calendar days, is set for completing the IEP and making decisions about the most appropriate placement.

K.A.R. 91-12-41(a)(1-5)

5.10. IEPs shall be implemented as soon as possible following the IEP meetings.

34 C.F.R. 300.342(b)(2)

correspondence, or telephone log) the participation of a representative of their agency with the parents on any review or revision of the IEP.

5.6 The date of development on each IEP precedes the date of initiation of special education services.

5.7. LEA files document that interim IEPs are developed only for eligible students.

a. Eligible students are those who have been identified as exceptional but: for whom the LEA does not have current records; or for whom more information is needed to determine appropriate placement.

b. Each interim IEP sets out the specific conditions and timelines for the trial placement. The duration of services does not exceed 30 days.

c. Files contain parental written consent for the proposed interim placement.

d. Records verify that for each interim IEP, a meeting was conducted within 30 calendar days to finalize the student's IEP.

5.10. Interviews and analysis of implementation dates compared to meeting dates on IEPs substantiate that IEPs are implemented with no undue delay (more than two weeks) from the date of the development meeting, unless LEA records contain documentation of:

a. Unsuccessful attempts to gain parent consent;

b. An IEP development meeting which occurs in the summer; or

c. Evidence of unavoidable delays in arranging transportation or other related services.

5.11. IEP meetings shall be held within 30 calendar days of determination that a student is in need of special education services.

34 C.F.R. 300.343(c)

K.A.R. 91-12-41(g)

5.13. The participants in the IEP meeting(s) shall include:

5.13.1. A representative(s) of the LEA, other than the student's teacher(s), who is qualified to provide, or supervise the provision of, special education services. This person must be knowledgeable of placement options and authorized to ensure that services specified in the IEP will be provided.

34 C.F.R. 300.344(a)(1)

K.A.R. 91-12-41(b)(1)

5.13.2. the student's teacher or teachers.

Note: For any student who is receiving special education, the teacher is the special education teacher with primary responsibility for implementing the student's IEP. If the student's primary handicap is a speech or language impairment, the teacher is the speech or language clinician. For an exceptional student who is being considered for placement in special education, the teacher is the student's regular classroom teacher or a teacher qualified to provide education in the suspected area of exceptionality. If the student is not in school or has more than one teacher, the LEA designates which teacher(s) will participate in the meeting.

34 C.F.R. 300.344(a)(2)

K.A.R. 91-12-41(b)(2)

5.13.3. One or both of the student's parents and, when appropriate, the child.

34 C.F.R. 300.344(a)(3)

K.A.R. 91-12-41(b)(3)

5.13.5. For a student evaluated for the first time, a member of the evaluation team or someone who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation.

34 C.F.R. 300.344(b)(1)(2)

K.A.R. 91-12-41(b)(5)

5.11. LEA files document that each initial IEP meeting is held within 30 calendar days of the meeting which establishes eligibility and need for special education services.

5.13. Each IEP contains signatures with a common date of each of the following:

5.13.1. Person qualified to provide or supervise special education, other than the student's teacher.

5.13.2. The student's special or regular education teacher or LEA designated teacher.

5.13.3. IEPs for all students under the age of 18 contain signatures of the parent/lawful custodian/advocate, or the files contain evidence of attempts to involve them.

5.13.5. For students who have been evaluated for the first time, or if it is the first IEP review since reevaluation, the IEPs contain the signature of a member of the evaluation team or someone qualified to interpret the results of the evaluation.

5.14. Each LEA shall ensure that parents have the opportunity to participate in their child's IEP meeting by:

5.14.1. Giving notification early enough to ensure the opportunity to participate in the IEP meeting. *Note: This notification need not be written.*

34 CRF 300.345(a)(1)

K.A.R. 91-12-41(c)

5.14.2. A reasonable attempt is made to schedule the meeting at a mutually agreed upon time and place or the parents are offered the opportunity to participate through an individual or conference telephone call.

34 C.F.R. 300.345(a)(2)&(c)

K.A.R. 91-12-41(c) and (d)

5.14.3. The notice indicates the purpose, time, date, and location of the meeting and who will be in attendance.

34 C.F.R. 300.345(b)

K.A.R. 91-12-41(c)

5.14.4. The LEA shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including the provision for interpreters or other facilitators for parents who are sensory impaired or whose principal language is other than English.

34 C.F.R. 300.345(e)

K.A.R. 91-12-41(c)

5.14.5. If parents are unable to attend, records are maintained of the attempts made to arrange the meeting.

34 C.F.R. 300.345(d)

K.A.R. 91-12-41(d)

5.15. A copy of the IEP shall be provided to parents.

34 C.F.R. 300.345(f)

K.A.R. 91-12-41(e)

5.14.1. Student records or written logs of contacts with parents document that notification is given at least 10 school days before the IEP meeting. Parent survey data substantiates the 10 day notice is offered regularly and that meetings are not convened on shorter notice unless parents agree to an earlier meeting date.

5.14.2. Written parent notice indicates more than one option as to a time and place for the meeting or the opportunity to participate by telephone or parent survey data substantiate the options are offered on a regular basis.

5.14.3. Written notice indicates the purpose, time, date, and location of the meeting; the number and role of school personnel who will be in attendance or parent survey data substantiate that oral notice of meetings provide the same information.

5.14.4. LEA files show evidence of provision of interpreters (documented in meeting summary, signature of interpreter on IEP, etc.) or interview data support that interpreters or other facilitators are provided as necessary.

5.14.5. Records of telephone calls made or attempted, copies of correspondence and/or home visits document more than one attempt to involve parents of students for whom there is no parental signature on the IEP.

5.15. Parent and staff reports document that parents are provided a copy of the IEP.

5.16. Each IEP includes:

5.16.1. A statement of the student's present level of educational performance;
34 C.F.R. 300.346(a)
K.A.R. 91-12-41(f)(1)

5.16.2. Annual goals which describe the educational performance anticipated within a year's time and which have a direct relationship with student needs as described in the present levels of educational performance;
34 C.F.R. 300.346(b)
34 C.F.R. 300.533(a)(1) and (2)
K.A.R. 91-12-41(f)(2)

5.16.3. Short-term instructional objectives and/or measurable, intermediate steps between the present level of performance and each of the annual goals;
34 C.F.R. 300.346(b)
K.A.R. 91-12-41(f)(3)

5.16.4. Objective criteria, evaluation procedures, and schedules for determining, at least every twelve weeks, whether the short-term objectives are being achieved;
34 C.F.R. 300.346(e)
K.A.R. 91-12-41(f)(4)

5.16.6. A statement of the specific special education services, related services, unique instructional media, and any special methods, adaptations or procedures necessary to provide the student an appropriate education.
34 C.F.R. 300.346(b)
K.A.R. 91-12-41(f)(5)

5.16.7. The extent to which the student will participate in regular education programs, (both academic and non-academic) with nonexceptional students.
34 C.F.R. 300.346(c)
K.A.R. 91-12-41(f)(6)

5.16.9. The projected date of initiation and duration of services including any extended school term services.
34 C.F.R. 300.346(d)
K.A.R. 91-12-41(f)(7)

5.16. Each IEP includes:

5.16.1. A statement of present level of educational performance, based upon the comprehensive evaluation or reevaluation assessment data, in all areas related to the area of exceptionality.

5.16.2. Annual goals which describe the student's educational performance anticipated within a year's time and have a direct relationship with student needs and level of performance.

5.16.3. More than one measurable objective for each annual goal.

5.16.4. Criteria, evaluation procedures and schedules for determining, at least every 12 weeks, whether each short-term objective or intermediate step is being achieved.

5.16.6. Specific special education and related services are listed.

5.16.7. The amount of time in regular education programs. The MIS requires that these data be stated in minutes per day per week.

5.16.9. The date of initiation and duration of services.

5.18. When an exceptional student transfers to or from a state institution, the sending LEA forwards the IEP to the receiving program as quickly as possible.

K.A.R. 91-12-41(k)

6.0. Placement in Least Restrictive Environment.

6.3. LRE requirements apply to all handicapped students whether in public or private institutions or other care facilities. LRE requirements apply to preschool age students, but, if the LEA doesn't operate programs for nonhandicapped, these alternatives are permissible:

- a. Establishing an integrated early childhood program
- b. Contracting for services with other preschool programs serving nonhandicapped, e.g. Head Start
- c. locating the LEA preschool in regular elementary school building

34 C.F.R. 300.227

34 C.F.R. 300.550(b)(1)

6.4. Removal of handicapped students from the regular education environment (more than 60% of the student's educational program spent in special education) shall occur only when education in that environment cannot be achieved satisfactorily with the use of supplementary aids and services. Note: Supplementary aids and services include instruction by a special teacher, related services, materials or equipment provided in conjunction with regular classroom instruction, including consultant services, tutoring, support by aides/paraprofessionals, technology, readers, and interpreters.

34 C.F.R. 300.550(b)(2)

5.18. Records of students who have transferred to or from a state institution document that the IEP was forwarded within five days of notification of the receiving agency, unless such notification occurred during a vacation period.

6.3. The written prior notice for all proposed placements contains a description of the educational placement options which were considered by the IEP Committee and the reasons for rejection of those options.

Student records contain evidence that a less restrictive environment was considered at the IEP meeting.

6.4. The records of each handicapped student receiving special education services outside of the regular educational environment for more than 60% of his/her educational program include:

- a. A written narrative giving the reasons for concluding that the student's failure to achieve satisfactorily in the regular educational environment is due to the nature and extent of the student's handicap and not to poor school attendance; serious and/or recurring health problems; inappropriate or incompatible instructional approaches or styles; or inappropriate IEP goals, objectives, or evaluation procedures/ criteria;
- b. A written narrative giving the reason(s) that the special class services described in the IEP could not feasibly be provided in the regular educational environment; or
- c. The records of each handicapped student receiving special education services in a separate school setting or at home include a statement of the reason(s) that the placement is essential to the attainment of the goals and objectives in the student's IEP; or

d. The records of each handicapped student receiving special education services in a residential setting include a statement of the reason(s) that the student cannot be transported to and from home on a daily basis or not live in a setting (other than the natural home) that would allow attendance in the regular educational environment; and

e. In student records, the justifications or rationales for placement outside of the regular education environment are not identical for all students in the same category of exceptionality and appear to have been determined individually.

6.5. The LEA provides handicapped students with supplementary aids and services to ensure the least necessary deviation from the educational experiences provided to nonhandicapped students.

34 C.F.R. 300.551(b)(2)
K.A.R.. 91-12-35(a)

6.6. The LEA makes sufficient alternative placement options available to handicapped students to meet their need for special education and related services and to ensure the least necessary deviation from the educational experiences provided to nonhandicapped students. These options include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and residential facilities.

34 C.F.R. 300.551(a) & (b)(1)
K.A.R.. 91-12-35(b)

6.7. The various alternative placements included under 6.6. are available to the extent necessary to implement the individualized educational program for each handicapped child.

34 C.F.R. 300.552(b)

6.5. A review of student records shows that the LEA uses a variety of supplementary aids and services in conjunction with regular class.

The LEA can produce records showing that the time some exceptional students spend in regular class has increased.

6.6. A review of student records shows that the LEA uses a variety of placement options to serve handicapped students in the same category.

6.7. There are no complaints or hearings in process regarding the availability of appropriate placement options.

Parent surveys/interviews and notice of intent to place show that alternative placement options are considered for each child.

6.8. Unless a handicapped student's individualized educational program requires some other arrangement, the student shall be educated in his/her home attendance center (i.e., the school which he or she would attend if not handicapped).

6.9. If special education and related services are not provided in a student's home attendance center, they shall be provided as close as possible to the student's home ; i.e., placement shall not be made in a distant program when an equally appropriate program exists closer to the student's home.

34 C.F.R. 300.552(a)(3)

34 C.F.R. 300.552(c)

K.A.R. 91-12-35(d)

6.10. In selecting the least restrictive environment, consideration is given to the educational and social consequences (potential harmful effects) of the proposed placement.

34 C.F.R. 552(d)

6.11. Students with behavior disorders shall not receive only homebound instruction for more than two months.

K.A.R. 91-12-55(c)

6.13. The LEA takes steps to provide nonacademic and extracurricular services and activities in such a manner that handicapped students have an equal opportunity to participate.

6.8. Parents surveyed state that services are provided in their child's home attendance center unless otherwise noted on the IEP. No complaints on this matter are on file in KSDE. N.A. for Special Purpose and Youth Center Schools.

6.9. Parents surveyed state that services are provided as close as possible to the student's home.

6.10. Justifications and reasons for selecting placement options for placement found in staff notes, placement notices or parental consent forms indicate that consideration has been given to the educational and social consequences of the suggested placement on the student. *Note: Considerations might include travel time, or history of conflicts with students or personnel in proposed placement.*

6.11. The records of BD students receiving homebound instruction show that the students are not educated solely in the home for more than two months.

6.13. The LEA has documentation of notification (e.g. parent handbook or written notice), regarding the opportunity for the participation of handicapped students with nonhandicapped students in nonacademic and extracurricular activities.

Parents surveyed state that they and their children have been given information about the opportunities for participation in nonacademic and extracurricular activities.

6.14. In providing nonacademic and extracurricular services and activities, the LEA shall ensure that each handicapped student participates to the maximum extent appropriate to his/her needs.

6.14. Parents surveyed indicate that their children are presented with opportunities to participate to the maximum extent appropriate in age appropriate nonacademic and extracurricular services and activities. *Note: Statements of individual parents who claim that their children were not given opportunities to participate in nonacademic and extracurricular services must be investigated and substantiated before a citation is given.*

The LEA has records (e.g. lists of participants) verifying the participation of handicapped students in nonacademic and extracurricular activities.

6.15. If a parent obtains an independent evaluation at private expense, the results of the evaluation must be considered by the LEA in any decision made with respect to the provision of special education and related services.

6.15. The LEA has records that document that the results of all independent evaluations made at private expense have been considered by the LEA in any decision made with respect to the provision of special education and related services.

7.0. Review

7.1. An IEP meeting shall be held no less than annually to review/revise the IEP/placement of each exceptional student.

K.A.R. 91-12-42(b)(3)

7.1. The meeting date shown on the IEP of each exceptional student shows that the IEP was developed/revise no longer than one calendar year prior to the date of the compliance review.

7.2. An evaluation, which is based on procedures which meet the requirements for a comprehensive evaluation, shall be conducted no less than every three years or more frequently if conditions warrant or if the student's parent or teacher requests an evaluation.

34 CFR 300.534(b)

K.A.R. 91-12-42(b)(4)

7.2. Student records contain documentation that the most recent comprehensive evaluation for each exceptional student was conducted within three calendar years from the anniversary date of the previous evaluation.

Student records contain staffing summaries or other documentation that the reevaluation included assessment of health, vision, hearing social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and prevocational /vocational skills.

7.3. An informal follow-up is conducted annually for at least two years to determine the educational status of students who have been returned to regular education and who are no longer receiving special education and related services.

K.A.R. 91-12-42(b)(5)

7.3. The LEA has a list of students who have been returned to regular education and who are being informally "followed". The list shows who is responsible for the follow-up of each student. N.A. for Special Purpose and youth Center Schools.

7.4. Parental consent shall not be required for any reevaluation providing that the child's parents have given consent for the initial evaluation and the child's parents have been given prior written notice of the proposed reevaluation

34 C.F.R. 300.504(b)(2)

K.A.R. 91-12-45(b)(1)

8.0. Graduation

8.1. Each exceptional child shall be eligible for graduation from high school upon completion of State Board requirements, as prescribed in SBR 91-31-12(h), and shall receive the same graduation recognition and diploma as nonexceptional students.

K.A.R. 91-12-32(a)

8.3.

a. The program required to meet approved alternative graduation requirements shall be specified in the student records on file for each exceptional student during the school year in which the student is enrolled in the ninth grade or its equivalent.

b. Progress toward graduation shall be annually monitored and recorded on an official transcript of credits.

K.A.R. 91-12-32

9.0. Procedural Due Process

9.2. Before taking any special education action in regard to any child the local education agency shall:

a. Mail or personally deliver to the lawful custodian the written notice required by

K.S.A. 72-972.

K.A.R. 91-12-44(c)(4)

b. If the lawful custodian is the Secretary of SRS, notify the SRS Area Office.

K.A.R. 91-12-44 (c)(3)

7.4 Student records contain documentation of parent notice of three year reevaluations(s).

8.1. Parents surveyed and graduation participation records show that exceptional students receive the same graduation recognition and diploma as nonexceptional students.

8.3.

a. If the LEA has alternative graduation requirements a sample of students enrolled in the grades 9-12 specify the alternative graduation requirements the student will be required to meet.

b Documentation is available which shows that progress toward graduation has been monitored annually since the ninth grade and credits have been recorded on an official transcript.

9.2.

a. and b. Student files contain a copy of the notice sent to the parent or lawful custodian. The notice documents that notice was given prior to the preplacement evaluation, initial placement, or change of placement.

9.3. When a student is aged 18 or older and has not been adjudicated to be incapacitated or adjudicated as a child in need of care, due process rights shall be afforded to the student.
K.A.R. 91-12-44(d)

9.4. If a comprehensive evaluation is recommended for a student the LEA shall give the the lawful custodian, opportunity for a conference and mail or personally deliver written notice which contains the content prescribed by K.A.R. 91-12-45.:

34 C.F.R. 300.502

34 C.F.R. 300.513

K.A.R. 91-12-45

9.3. Consent forms for special education action have been signed by all students aged 18 or older who have not been adjudicated incapacitated or as children in need of care.

9.4. Parents surveyed state that they had opportunity for a conference and received notice prior to the comprehensive evaluation. Records show that the notice includes:

a. A clear description of proposed evaluation procedures, duration of the evaluation and types of tests used;

b. Advice of the parent's right to consent or object to any proposed action, in writing, upon forms provided by the agency;

c. A description of all procedural due process rights of parents, including the right to a hearing;

d. Advice that if the parent does not consent to the proposed action, the LEA may request a due process hearing or seek a court order for the evaluation;

e. Information about free or low cost legal services or other relevant services in the area;

f. The opportunity to obtain an independent evaluation of the student;

g. Advice that parents have the right to access school reports, files and records related to the proposed action; and

h. Advice that the child will remain in the present placement until a due process hearing determination or parent consent is obtained. If the complaint involves admission to public school, the student shall be placed in a public school, with parental consent, pending completion of all proceedings.

9.5. The LEA shall provide parents, upon request and when notification of a proposed action is given, information about where an independent evaluation may be obtained.

34 C.F.R. 300.503

K.A.R. 91-12-45(c)

9.6. After completion of the evaluation no special education action shall be taken until the local education agency has mailed or personally delivered to the lawful custodian written notice as specified in K.A.R. 91-12-46.

K.A.R. 91-12-46

34 C.F.R. 300.505

34 C.F.R. 300.506(c)

9.5. Documentation that parents have received information about where an independent evaluation may be obtained is available (e.g. records of parents who have requested and received such information).

9.6. Parents surveyed state that they received a copy of the written notice and in each student's record there is a copy of the notice which contains all of the following:

- a. A description of the proposed action, the reasons it is deemed appropriate, evaluation procedures, tests, records, or reports upon which the action is based, options considered and the reason for rejection;
- b. Advice that the parent may consent or object to any proposed action, in writing, upon forms provided by the agency;
- c. A statement of all procedural due process rights including the right to a hearing;
- d. The information that the agency may request a due process hearing if consent is not given;
- e. Information about free or low cost legal services or other relevant services in the area;
- f. Advice that parents have the right to access school reports, files and records related to the proposed action; and
- g. Advice that the child will remain in the present placement until a due process hearing determination or consent is given by the parent.

9.7. Prior notice shall be:

a. Written in language understandable to the general public; and

34 C.F.R. 300.505(b)(1)

b. Provided in the native language or other mode of communication used by the parent unless it is clearly not feasible to do so.

34 C.F.R. 300.505 (b)(2)

9.8. The agency shall determine the parent's native language or mode of communication and shall have procedures to insure that the parent understands the content of the notice. If the parent's native language is not a written language, the notice shall be translated orally or by other means to the parent in his/her native language or other means of communication.

34 C.F.R. 300.505

9.9. If the parent gives written consent for the proposed action, it may be initiated immediately. If written consent is not given, action shall not be taken for 30 days to afford the parent an opportunity to indicate his/her objections. If, after the 30 day waiting period, the parent has not given written consent, the LEA shall attempt to meet with the parent and explain the need for the proposed action and answer questions of the parent. If the parent still refuses to consent, the LEA shall either accept the decision or initiate a due process hearing.

K.A.R. 91-12-46(b)

9.11. The LEA shall maintain a list (three or more) of qualified hearing officers who have approved by the State Board and a resume or vita for each person on the list.

34 C.F.R. 34.507

K.A.R. 91-12-68(a)

9.7. Documentation that the notice is:

a. Written in language understandable to the general public, (e.g. the compliance monitor should find it easy to read in terms of vocabulary and sentence structure); and

b. Provided in the native language or in the mode of communication used by the parent; (e.g. there are copies of the notice in any foreign languages which are prevalent in the district and/ or the LEA has a list of parents who required an interpreter and can show that an interpreter was provided).

9.8. The LEA has procedures and can document that parents understand the contents of the notice, e.g. the parent signs a form signifying comprehension.

If the parent's native language or other mode of communication is not a written language, written records show that the agency has translated the notice orally or by other means to the parent in his/her native language or other mode of communication, e.g. use of translators/interpreters.

9.9. Parents surveys/interviews and student records show that the proposed action has occurred immediately if the parent has given consent .

If, after 30 days, the parent has not consented, the LEA has records of meetings or attempts to meet with the parents.

LEA records show that it did not initiate a hearing until the expiration of the 30 day waiting period.

9.11 The LEA has a list of hearing officers and a resume or vita for each person on its list The persons listed are on the state approved list and are not employees of the LEA.

10.2. Each LEA shall have a plan for the implementation and use of the comprehensive system of personnel development established by the State education agency.

34 C.R.F.R.300.224

K.A.R. 91-12-34

11.1 Procedures for evaluating the effectiveness of special education programs shall be developed and implemented by each LEA.

34 C.R.F.R. 300.146

K.A.R. 91-12-34

10.2. The LEA has agendas, lists of participants, and/or evaluation results documenting implementation of their inservice plan.

11.1 Reports of evaluation activities and results are on file in the LEA.

XXI

DEFINITIONS

Accredited or approved special education program means a special education program provided by any private, nonprofit corporation or any public or private institution within or without the state which has met standards and criteria set by the State Board of Education.

Adaptive physical education means programs which have the same objectives as the regular physical education programs, but in which adjustments are made in the curriculum to meet the needs and abilities of exceptional individuals.

Anticipated duration of services means the period of time covered by the IEP which is not to exceed twelve months.

Appropriate education means special education and related services which:

- a. meet the standards and requirements of the Education of All Handicapped Children Act, Part B (P.L. 99-457), the Vocational Education Act (P.L. 98-524), the Rehabilitation Act of 1973 (Section 504), the Kansas Special Education for Exceptional Children Act (K.S.A. 72-966), and of the Kansas State Board of Education; and
- b. is provided in accordance with a student's individualized education program.

Art therapy means a related service which provides therapeutic art for exceptional students; participation in the comprehensive evaluation process to assist in determining a student's handicapping condition through the art process; and the enhancement of skills in the areas of academic, perceptual motor, and verbal/nonverbal communication.

Assessment means the process of collecting information (data) for the purpose of making decisions about a student.

Audiology means a related service which identifies children with a hearing loss; determines the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing; provides habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation; and creates and administers programs for prevention of hearing loss.

Authorized employees means persons within the education agency who have a legitimate educational interest in the individual child.

Autism means a severe and pervasive lifelong developmental disorder which manifests itself before thirty months of age. Children and youth with autism exhibit chronic impairments in their ability to learn, communicate, and interact with others in their environment. These children are handicapped to such a degree, and so significantly incapacitated in their functioning, that special education and related services are almost always necessary.

Behavior disorders means a condition with one or more behavioral characteristics that are:

- a. exhibited at either a much higher or much lower rate than is appropriate for one's age;

- b. documented as occurring over an extended period of time in different environmental settings within the school, and home or community; and
- c. interfering consistently with the student's educational performance. This interference with educational performance shall not be a result of intellectual, sensory, cultural, or health factors that have not received appropriate attention.

Certification means the granting of an initial teaching certificate by the KSDE or the addition of a provisional endorsement or the addition of endorsements on a certificate.

Child in need of care is defined in K.S.A. 38-1502 and refers to a child over whom the court has acquired jurisdiction by the filing of a petition pursuant to the Kansas Code for Care of Children.

Competency means the demonstrated ability to perform to an established criterion level.

Comprehensive evaluation means the process of collecting information about an individual student to:

- a. provide sufficient information to identify the student's individual educational needs and provide a basis for appropriate intervention;
- b. determine whether that student is an exceptional child in accordance with eligibility criteria set by the State Board; and
- c. determine whether special education services are needed for the student to benefit from the educational program.

Confidentiality means the protection of personally identifiable information at all stages including the collection, use, and maintenance of education records.

Consent means that parental approval for a special education action has been given after the parent has been fully informed of all information relevant to the activity for which consent is sought, including a description of that activity. Signed parental consent shall be valid only for the activity described. K.S.A. 72-972 states that the parent of the involved child may revoke his or her consent to the proposed action at any time and may, but is not required to, request the hearing provided for in this section of the law.

Counseling services means the related services which assist in the identification of students needing referral for special education evaluation; mainstreaming special education students into the regular educational program; and individual and group counseling/consultation with parents, teachers, and students to enhance the development of the individual.

Dance movement therapy means a related service which provides for the therapeutic use of movement as a process which furthers the emotional and physical integration of the exceptional student. The dance movement therapist conducts a student assessment through movement observation, develops individualized movement programs, plans therapeutic goals based on students' demonstrated needs, and promotes skills development in the areas of movement repertoire, expressive movement, verbal/nonverbal communication, social/behavioral, preacademic, academic, and total development through the movement process. The therapist also evaluates student progress, provides training and technical assistance as a resource to teachers and parents, and participates in staffing conferences with educators including support services personnel or treatment teams.

Dangerous behavior means behavior which is an immediately endangerment to self, other persons, or property.

Days mean calendar days excluding the day of the event from which the designated period of time begins to run. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday; in which case, the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday. A "legal holiday" is one so designated by the Congress of the United States or Kansas Legislature. In calculating the length of time for responding to a notice which is served by mail, three days shall be added to the prescribed period.

Deaf-blind students means those individuals who have auditory and visual impairments, the combination of which causes severe communication and other developmental and educational problems that they cannot properly be accommodated in special education programs solely for the hearing impaired or the visually impaired individual. Although the deaf-blind have many of the same learning characteristics and needs as the severely multiply handicapped, they may not always be functioning at a severe or profound range of retardation.

Deficiencies means those items for which corrective actions have been required.

Denominational or parochial school means a private school maintained by a religious body.

Description of procedures means a local system for the development and implementation of program evaluation which addresses the following components: identification of the individual responsible for program evaluation, the process for development of evaluation questions, procedures for data collection and data analysis, and reporting formats.

Developmental preschool means a school, operated by a private nonprofit corporation or foundation, that:

- a. serves handicapped children through age seven (K.A.R. 91-12-22 (g)); and
- b. at which special education services meeting the requirements of Article 12 of Kansas Administrative Regulations are provided.

Developmentally delayed means children, from age birth to five years inclusive, who cannot be accurately diagnosed as having a specific handicapping condition but who have one or more diagnosed condition(s) which cannot be medically corrected and are associated with educationally handicapping conditions or who test 25 percent or more below chronological age on criterion or norm-referenced, validated test instruments in one or more of the following areas: cognitive development, sensory motor development, fine motor skills, gross motor skills, receptive communication, expressive communication, social-affective skills, self-help skills, auditory, visual, or haptic sensory processing.

Developmentally disabled means an individual who has a severe, chronic disability which—

- a. is attributed to mental or physical impairment or combination of mental and physical impairments;
- b. is manifested before the person attains age twenty two;
- c. is likely to continue indefinitely;
- d. results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility,

- (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
- e. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated (P.L. 98-527).

Directory information means information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency attended (34 CFR 99.3).

Document means to furnish written evidence of actions taken.

Early childhood education for handicapped means an organized program of purposeful, sequential activities which are appropriate to the developmental age of the handicapped child from birth through age seven.

Educable mentally retarded means an individual with mild retardation in intellectual development and adaptive behavior.

Education records means those records, files, documents, and other materials which:

- a. are maintained by an educational agency or institution or by a person acting for such agency or institution; and
- b. contain information directly related to a student.

The term education records does not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record (34 CFR 99.3). For the purpose of this definition, *substitute* means an individual who is carrying out the responsibilities of the person who made the record on a short-term basis. It does not refer to an individual who permanently succeeds the maker of the record in his/her position.

Educational placement means the special education and related services specified in a student's current individualized educational program (IEP) and the instructional environment in which these services are provided.

Effectiveness means the degree to which program goals are achieved.

Endorsement means the code numbers and legend printed on the certificate which identify the level and field or subject a person is qualified to teach.

Equally effective nonacademic or extracurricular services or activities means a nonacademic or extracurricular service or activity which affords a handicapped student an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as a nonhandicapped peer, and to ensure participation appropriate to the student's needs. Segregated activities shall not be maintained solely for the reason that they are "equally effective." While a student is in a segregated facility, the student shall be given the opportunity to participate in activities with nonhandicapped students.

Exceptional children means those who differ in physical, mental, social, emotional, or educational characteristics to the extent that special education services are necessary to enable them to progress toward the maximum of their abilities or capacities (K.S.A. 72-962(f)(2)). Included in this definition are those children/youth who are mentally retarded, specific learning disabled, gifted, hearing impaired, language impaired, speech impaired, behaviorally disordered, physically impaired, other health impaired, severely multiply handicapped/deaf-blind, or visually impaired (K.A.R. 91-12-22(j)).

Expulsion from school means removal from the educational environment for a term which does not exceed the current school year.

Extended school term services means State approved special education programs, alternative instructional arrangements, and/or related services made available to handicapped students beyond the completed minimum of 180 days or 1,080 hours of instruction as required by State statutes or the school calendar adopted by the local school board.

Free education means special education provided at public expense with no cost to parents other than fees or charges which are charged to all students, such as textbook rental, school lunch, laboratory fees, or student trips.

Gifted. See definition for *intellectually gifted*.

Guidance and/or school counseling services means a related service which assists in the identification of students needing referral for special education evaluation, mainstreaming special education students into the regular educational program; and individual and group counseling/consultation with parents, teachers, and students to enhance the development of the individual.

Handicapped children means all exceptional children except those identified as gifted (K.A.R. 91-12-22(k)). *Handicapped children* are those children evaluated by qualified professionals as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services (34 CFR 300.13(a)).

Hearing disorder/impairment means a loss of auditory functions sufficiently severe to affect the individual's ability to communicate with others or to develop communicative and/or learning skills.

IEP team means the persons in attendance at the meeting(s) in which a student's individualized education program is developed, reviewed, or revised.

Individualized education program means a statement written annually which is jointly developed by the school and parent(s) and describes the unique special educational needs of the exceptional student as well as the services to be provided to meet these needs.

In-school suspension means a short-term (not exceeding five days) suspension during which the student stays at school but not in the classroom to which he/she is assigned. At the discretion of the local district, the student may or may not be permitted to complete school work. The student is not under the direction of a certified teacher.

Inservice training means any planned learning opportunity provided to certificated and noncertificated personnel employed by an LEA for purposes of improving the performance of

such personnel in an already held or assigned position and training other than that received by an individual in a full-time program which leads to a degree.

Inspect and review means the right of parents or eligible students to gain an understanding of information contained in the educational records.

Instructional environment means the type of delivery model used to provide special education and related services to a student, e.g., regular education class, special education class, special school, home, or hospital.

Intellectually gifted means those individuals who have potential for outstanding performance by virtue of superior intellectual abilities. The intellectually gifted are those with demonstrated achievement and/or potential ability. Individuals capable of outstanding performance include both those with demonstrated achievement and those with minimal or low performance who give evidence of high potential in general intellectual ability, specific academic aptitudes, and/or creative thinking abilities.

Language disorder and/or impairment means children whose basic communication system—whether verbal, gestural, or vocal—evidences disorders, deviations, or general developmental needs in language, speech, fluency, or voice quality and hinders their academic learning, social adjustment, self-help skills, or communication skills.

Legitimate educational interest means having an educational reason for access to records. Persons who do not have direct or indirect special education and related services or regular education contact with the child shall not have access to his/her records.

Local education agency (LEA) means any governmental agency authorized or required by state law to provide education to exceptional children, including each school district, special education cooperative, interlocal entity, state school, and state institution (K.A.R. 91-12-22(w)). As used in this plan, the term also includes private special purpose schools and developmental preschools inasmuch as they are included in the monitoring process as a condition of State accreditation or approval.

Long-term suspension means removal from the educational environment for more than five consecutive school days, not extending beyond the current school semester.

Maximum extent appropriate means the integration of handicapped and nonhandicapped students in instructional and noninstructional environments consistent with the ability of the handicapped students to achieve satisfactory educational performance.

Mediation means an informal process by which the participants, together with the assistance of a mutually agreed-upon neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensus settlement that will accommodate their child's educational needs.

Medical services means services provided by a licensed physician to determine a child's medically related handicapping condition (34 CFR 300.13(b)(4)).

Medical services for diagnostic and evaluation purposes means the identification/diagnosis of medically related handicapping conditions which result in the individual's need for special education and related services.

Mentally retarded means the limitation of mental ability which differs in both degree and quality to the extent that special assistance is necessary to aid the individual in the acquisition of understandings and skills for coping with environmental situations.

Each mentally retarded individual acquires a range of behaviors which he/she can use in order to perform on an independent basis in some situations, while he/she will require assistance and/or support to perform in other situations. Since mental retardation occurs on a continuum, the ability to perform independently also occurs on a continuum. The dependency levels of this continuum range from independent performance through semi-independent, semi-dependent and dependent, to totally dependent performance.

Motor ability means abilities and components of abilities which support motor performance including:

- a. neuromuscular control, e.g., reflexes, range of motion, muscle tone, strength, endurance, postural control, and soft tissue integrity;
- b. sensory processing;
- c. perceptual skills;
- d. specific motor abilities, e.g., activity tolerance, gross motor coordination, bilateral integration, praxis, fine motor and visual-motor coordination, and oral motor control.

Music therapy means a related service which utilizes music to affect the restoration and maintenance of mental and physical health; the participation in pupil assessment, goal formulation, program development, and program implementation; and the enhancement of skills in the areas of communication, social/behavioral, preacademic and academic, and perceptual motor through the music process.

Negotiation means an informal process in which the participants attempt to decide issues on their merits, rather than through argument, and reach a mutually acceptable agreement that will accommodate their child's educational needs. Negotiation differs from mediation in that no trained third party facilitator is used.

Nonacademic and extracurricular services and activities include but are not limited to the following services and activities when provided by an LEA:

- a. counseling services,
- b. athletics,
- c. transportation,
- d. health services,
- e. recreational activities,
- f. referrals to agencies which provide assistance to handicapped persons,
- g. assistance in making outside employment available,
- h. recess periods, and

- i. special interest groups or clubs.

If a student is placed in a segregated facility, the student shall be provided the opportunity to participate in nonacademic and extracurricular activities with nonhandicapped students.

Note: Counseling services, transportation, and health services may also be considered related services depending upon the individual needs of the student as identified by the IEP committee.

Nonmedical care means services not provided by a licensed physician.

Notify means to provide information in writing or in the primary mode of communication of the individual for whom the notice is intended.

Occupational therapy means a related service which provides for the remediation, restoration, or compensation for functions lost through illness or injury; the adaptation or modification of materials or equipment to give a student increased independence; the prevention of initial or additional deformity or disability through early intervention and programming; and the improvement of ability to perform tasks for independent functioning when functions are impaired or lost.

Paraprofessional means a special teacher who is qualified to assist certified teachers in the instruction of exceptional children as determined by standards established by the State Board of Education and who is so approved by the State Board of Education.

Parent, as used in this plan, means a natural parent, an adoptive parent, a step parent, a person acting as parent, an education advocate, or a lawful custodian.

- a. *Person acting as parent* means a person, other than a natural parent who has physical or legal custody of a child, or is by law liable to maintain, care for, or support the child, or is contributing the major portion of the cost of support of the child (K.S.A. 72-962(n)).
- b. *Lawful custodian* means a parent or a person acting as a parent. If none of the above is known or can be found, an agency shall cause proper proceedings to be instituted pursuant to the Kansas juvenile code for care of children to determine whether a child is a child in need of care. For a child whose custodian is the secretary of social and rehabilitation services, the term lawful custodian means the secretary except, when used in K.S.A. 72-972 through 72-975, and amendments to such sections, the term means an education advocate (K.S.A. 72-962(l)).
- c. *Education advocate* means a person appointed by the state board [of Education] to act as lawful custodian in accordance with the provisions of K.S.A. 38-1513a and amendments thereto (K.S.A. 72-962(o)).

Parent counseling and training means the related service designed to assist parents in understanding the nature and implications of their child's or youth's exceptionality, to provide training in child development and management techniques for meeting the specific needs of an exceptional child or youth, and to provide information on community resources.

Personally identifiable means that the data or information in the education records includes:

- a. the name of the student, the student's parent, or other family member;
- b. the address of the student;
- c. a person identifier, such as the student's social security number or a student number;

d. a list of personal characteristics which would make the student's identity easily traceable; or

e. other information which would make the student's identity easily traceable.

Personnel development means any inservice or preservice activity designed to ensure that all personnel are qualified to adequately perform their duties pertaining to the instruction of exceptional students.

Physically and other health impaired means children and youth with physical and other health impairments whose physical disabilities restrict or prevent them from experiencing meaningful/productive participation in regular educational programs without special education assistance. One or more special education services may be required to assure optimum participation in the total instructional environment. The physical and health impairments are further clarified as follows:

Physically impaired means a severe physical disability which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (i.e., spina bifida, absence of some member), impairments caused by disease (i.e., bone tuberculosis), and impairments from other causes (i.e., fractures, burns which cause contractures, amputation, cerebral palsy, and other dystrophies and atrophies).

Other health impaired means limited strength, vitality, or alertness that interferes with a child's participation in educational experiences. The term includes impairments caused by chronic or acute health problems, such as heart condition, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia or diabetes. Autistic conditions which are manifested by severe communication and other developmental and educational problems are included in other health impaired.

Physical therapy means a related service which provides for the assessment of children and youth whose physical handicap, motor deficit, and/or developmental delay interfere with the learning processes and physical management of the school environment; the consultation and treatment of identified children and youth which may include training of developmental motor skills, ambulation and gait training, postural awareness, use of wheelchair, orthoses (braces), and other assistive devices; the adaptation or modification of materials or equipment to give a student increased independence; and the prevention of initial or additional deformity or disability through early intervention and programming.

Preassessment means the process of determining whether the educational needs of a student can be met by the regular education program through instructional modifications and documentation of the result. The preassessment team provides support and assistance to regular education teachers so that they may deal effectively with students who exhibit learning and/or behavioral differences.

Preassessment team means a group of regular education and special services professionals who meet to assist a regular education teacher assess a student's learning and behavior problems, initiate modifications in materials, curriculum, or technique, and evaluate the results of these modifications. The team may be formed on demand and maintained as long as needed, or formed as an ongoing instructional assistance committee. The membership of the team may vary, but should be comprised mainly of regular education personnel.

Preschool age means birth to school age for exceptional children (K.A.R. 91-12-22(bb)).

Preservice training means the preparation leading to a degree or initial certification/endorsement for a specific role in the profession. This includes preparation of individuals new to the education profession as well as preparation of individuals wanting to change educational roles.

Private school means an organization which regularly offers education which is exempt from Federal income taxation under Section 501 of the Federal internal revenue code and attendance at which satisfies the compulsory school attendance laws of Kansas (K.S.A. 72-5392).

Program evaluation means assessment of compliance with established standards, criteria, and guidelines; overall effectiveness of meeting the needs of handicapped/exceptional students within the state; and the assessment of best practices.

Public expense means paid or otherwise provided by a local education agency with no cost to the parent other than fees or charges which are charged to all students, such as textbook rental, school lunch, laboratory fees, or student trips. The local education agency either pays for the full cost of services or ensures that the services are provided.

Qualified personnel means persons meeting the highest requirements in the state applicable to a specific profession or discipline. This standard shall apply to the following personnel:

- a. a teacher employed by an LEA to provide special education service who is certified by the State Board of Education to instruct exceptional children at the level and with the category of students of the actual teaching assignment;
- b. special education related services personnel certified by the State Board of Education;
- c. special education related services or instructional personnel who hold current certification from their respective licensing or registering agents appropriate for their special work;
- d. other related services or instructional personnel for which there is no licensing or registering agent, but who are employed to work with exceptional children. These individuals are approved on an individual basis by the Special Education Administration Section and must also be recommended for employment by their parent training institution; and
- e. any instructional or related services paraprofessional who works under the supervision of a special education professional in an accredited or approved special education program.

Recreation is the related service which assesses leisure function, provides therapeutic recreation services including play, encourages recreation programs in school and community agencies, and instructs in leisure education.

Reevaluation means any comprehensive evaluation conducted after the preplacement evaluation. The purpose of a reevaluation is to:

- a. assess the student's current educational needs;
- b. determine the appropriateness of that student's special education program, i.e., determine whether the student is making satisfactory educational progress in his/her current placement; and
- c. make recommendations for updating or revising the student's IEP.

Regular class or regular classroom means a specific instructional grouping within the regular educational environment.

Regular education environment means the regular classroom and any other instructional setting in which both regular and special education services may be provided to both handicapped and nonhandicapped students.

Related services means those services that are required to assist an exceptional child to benefit from special education. Related services include art therapy, audiology, counseling services, dance movement therapy, medical services for diagnostic or evaluation purposes, music therapy, occupational therapy, parent counseling and training, physical therapy, school psychological services, recreation, school health services, school social work services, special education administration and supervision, special music education, speech and language services, and transportation (K.A.R. 91-12-22(dd)). Related services shall be provided in accordance with standards set by the State Board of Education.

Removal from regular education environment means placement in special education and/or related services for more than 60 percent of the student's educational program.

Satisfactory educational achievement means:

- a. for a handicapped student currently receiving special education and related services, satisfactory progress as determined by the IEP committee toward the attainment of the annual goals and short-term objectives contained in the student's current IEP,
- b. for a handicapped student enrolled in the school of a local education agency but not currently receiving special education and related services,
 - (1) performance at or not significantly below grade level or the expected performance level for the student's chronological age and ability level; or
 - (2) documented positive response to one or more regular education interventions.
- c. for a handicapped student not currently enrolled in any LEA,
 - (1) performance at or not significantly below the ability level for the student's chronological age while enrolled in a preschool program; or
 - (2) satisfactory educational progress in a trial educational placement.

School age means:

- (1) for gifted children, having attained the age at which the local board of education provides educational services for non-exceptional children, to and including the school year in which the gifted child completes a local curriculum or reaches age 21, whichever occurs first;
- (2) for handicapped children, until June 30, 1991, having attained the age at which the local board of education provides educational services for non-exceptional children, to and including the school year in which the handicapped child completes a local curriculum or reaches age 21, whichever occurs first; and
- (3) for handicapped children, on and after July 1, 1991, having attained age three on or before September 1 of the current school year, to and including the school year in which the

handicapped child completes a local curriculum or reaches age 21, whichever occurs first (K.A.R. 91-12-22(gg)).

School district of residence means the unified school district in which the child lives if:

- a. the child lives with a resident of the district and the resident is the parent, or a person acting as parent, of the child; or
- b. the child lives in the district as a result of placement therein by a district court or by the Secretary of Social and Rehabilitation Services.

School facility means any setting in which instruction and school related activities occur, such as classrooms, itinerant service areas, physical education areas, and playgrounds. These also include areas for extracurricular, dining, and athletic activities.

School health services means the related services which provide for the development, maintenance, and updating of individual records on every student with system of recording for identification of major health problems; the development and implementation of a plan of care for all students with major health problems, i.e., catheterization, administering of medications, changing of dressings; the liaison to the family, the physician, and other involved agencies; the promotion of wellness through health education; and the promotion of staff inservice education and training on special health problems.

School psychological services means special services which provide consultation with other school staff in planning individual programs to meet the special needs of children as indicated by interviews, behavioral evaluations, and tests; the administration and interpretation of psychological and educational tests; the consultation with teachers and other school staff concerning child behavior, modes of learning and the development of a positive learning climate; and psychological counseling for children and parents. Supplements in each categorical area and/or on each related service area may be requested from the Special Education Administration Section of the Kansas State Department of Education.

School social work services means the related services which provide for social assessment of the handicapped student; group and individual counseling with student and family; assistance with those situations in the student's living environment (home, school, community) that affect the student's adjustment in school; and the mobilization and coordination of home, school, and community resources to enable the student to receive the maximum benefit from his or her educational program.

School year means the twelve-month period ending June 30.

Screening means procedures which consider all children in a given population in order to locate those who may require preassessment or referral for a comprehensive evaluation.

- a. *developmental screening* means screening procedures which assess health, vision, hearing, social and emotional status, general intelligence, educational performance, communicative skills, and motor abilities.
- b. *initial screening* means screening procedures which are applied to all children entering the educational system for the first time. This entry may be at the preschool, elementary, or secondary level.
- c. *systematic and ongoing screening* means screening procedures which are scheduled and conducted on a regular basis for all students in all levels of an LEAs educational program.

Students who fail to meet screening criteria will typically be referred to the preassessment team.

Severely multiply handicapped/deaf-blind means individuals who demonstrate severe/profound functional retardation in addition to severe sensory and/or motor disabilities, severe emotional disturbance, chronic health conditions, or severe communication disorders. The following characteristics are frequently associated with this low-incidence population; severe motor involvement; absence of feeding, dressing, grooming, and/or toileting skills; failure to imitate simple actions of others, follow simple directions, communicate, guard against common physical dangers, or interact appropriately with the physical or social environment; and stereotypic and/or self-injurious behaviors. These characteristics prohibit or severely limit successful progress in a special program designed to accommodate a single major handicap.

Short-term suspension from school means removal from the educational environment for a term not exceeding five consecutive school days.

Significant loss of previously acquired skills means that a student will regress, as a result of a break in educational programming, to the extent that it is unlikely that the student will recoup, in forty-five school days, previously acquired critical skills/behaviors.

Special education action means any act on the part of a local education agency by which a child is:

- (1) *Excluded, reassigned, or transferred from regular school classes upon the basis that the child is an exceptional child and cannot benefit from these classes;*
- (2) *placed in, transferred to or from, or denied placement in special education services.*

Special education action includes:

- (A) *Any initiation or refusal to initiate a comprehensive evaluation to determine eligibility for special education services; and*
- (B) *any change in programming which alters the type or intensity of special education services offered an exceptional child (K.A.R. 91-12-22(oo)).*

Special education administration and supervision means the local principal administrator or administrators in the area of special education. There are specific training and certification requirements these individuals shall have before they can be approved as a director or supervisor. Some school districts or cooperative programs will have a director as well as supervisors for the various programs. A supervisor is an individual who supervises and coordinates the activities of an area of special education. This person is usually directly responsible to the director of special education and is actively engaged in curriculum development and supervision of instruction.

Special education instructional materials centers (SEIMC) means a center which provides media resources in support of special education programs. The SEIMC supplements rather than supplants the district's obligatory provision of those supplies and equipment required to meet the needs of exceptional learners.

Special education services means programs for which specially trained personnel, specially designed instruction, programming techniques, facilities and equipment may be needed for the education of exceptional children (K.S.A. 72-962(h)). Such services include physical education (regular or adapted) and vocational education.

Special music education (adaptive music) means a related service for exceptional students which determines and implements musical and comprehensive educational goals, adapted for equal emphasis and achieved cooperatively and simultaneously. It provides music instruction which enables the student to develop concepts and skills adapted to his/her individual functioning level through educational experiences in a musical context. Special music education programs are designed to provide assessment, plan individual goals and objectives, implement individualized instruction through adapted teaching techniques, evaluate student progress, and provide consultation for parents and other professionals.

Special purpose school means any school for exceptional children which is operated by a private, nonprofit corporation or a public or private institution within or outside of the state of Kansas which is:

- a. accredited by KSDE under the provisions of S.B.R. 91-33-1 *et seq.*, or
- b. accredited or approved by the state in which it is located, subject to approval by the Special Education Administration Section, Kansas Department of Education.

Special secure setting is an instructional setting which is determined by noneducational personnel. Examples include a correctional facility or restriction to a ward for a student confined to a treatment facility. If a student is placed in a special secure setting, the student shall be provided the opportunity to participate in activities with nonhandicapped students.

Special teacher is defined in K.A.R. 91-12-22(qq) as:

- (1) *A teacher employed by a local education agency to provide special education services who is certified by the state board of education to instruct exceptional children;*
- (2) *special education related services personnel certified by the state board of education;*
- (3) *special education related services or instructional personnel who hold current certification from their respective licensing or registering agency appropriate for their special work;*
- (4) *other related services or instructional personnel for which there is no licensing or registering agent, but who are employed to work with exceptional children. These individuals shall be approved on an individual basis by the special education administration section and shall be recommended for employment by their parent training institution; and*
- (5) *any instructional or related services paraprofessional who works under the supervision of a special education professional in an accredited or approved special education program.*

Included under this definition are art therapists, audiologists, counselors, dance movement therapists, music therapists, occupational therapists, physical therapists, school psychologists, school health personnel, school social workers, special education administrators/supervisors, special education teachers, special music education teachers, speech and language clinicians, and special education paraprofessionals.

Specific learning disability means a specific disorder in the ability to learn effectively in respect to one's own potential when presented with an appropriate regular instructional environment. The ability to learn effectively is manifested as a disorder in an individual's ability to receive, organize, or express information relevant to school functioning, and is demonstrated by a significant discrepancy between an individual's general intellectual functioning and achievement in one or more of the following areas: preacademic skills, oral expression, listening comprehension, written expression, basic reading skills, reading comprehension,

mathematics calculation, and mathematics reasoning. Learning disabilities do not include learning problems which are due primarily to vision, hearing, or motor impairments; mental retardation; emotional disturbance; environmental, cultural, or economic disadvantage; or a history of an inconsistent education program.

Speech and language services means the services which provide for the identification of students with speech and language disorders; the diagnosis and appraisal of specific speech and language disorders; the referral for medical or other professional attention necessary for the habilitation of speech or language disorders; the provisions of speech and language services for the habilitation or prevention of communicative disorders; and the counseling and guidance of parents, students, and teachers regarding speech and language disorders. The supplement on Speech and Language Programs may be requested from the Special Education Administration Section of the Kansas State Department of Education.

State institution means Topeka State Hospital, Osawatimie State Hospital, Rainbow Mental Health Facility, Larned State Hospital, Parsons State Hospital and Training Center, Norton State Hospital, Winfield State Hospital and Training Center, Kansas Neurological Institution and any youth center as defined by K.S.A. 1984 Supp. 38-1602 (K.S.A. 72-962(a)). The State Department of Social and Rehabilitation Services is responsible for the operation of State institutions.

State special education advisory council means a lay and professional council consisting of nine members appointed by the state board of education. This council shall offer advice, consultation and recommendations to the state board on matters concerning special education services for exceptional children (K.A.R. 91-12-22(ss)). To provide for representative and statewide participation in decision making related to the education of exceptional children, this council was established in 1974 by the Special Education for Exceptional Children Act (K.S.A. 72-964).

State school means Kansas State School for the Deaf and Kansas State School for the Visually Impaired. The State Board of Education is responsible for the operation of State schools.

Statutory directives means all applicable statutes, regulations, State plans, and applications.

Supervised alternative setting, when used as a disciplinary measure, means maintaining the student, on a temporary basis, in an educational environment other than the assigned classroom under the direction of a certificated teacher. The use of this form of management must be included in the student's original individualized education program, or may be included in an IEP revision if such use is deemed necessary. This setting allows the student to complete and receive credit for his/her work.

Supplementary aids and services means special instruction, instructional support services, materials, or equipment provided in conjunction with regular classroom instruction including consultant teacher, itinerant instruction, resource room instruction, tutoring, instructional support provided by teacher aides and paraprofessional personnel, technology, readers, and interpreters.

Test means a systematic procedure for observing a student's behavior and describing it by means of a numerical scale or a category system.

Transportation, as related to exceptional children, includes traveling to and from school, between schools, and around school buildings. Specialized equipment may include special or adapted buses, lifts, and ramps.

Unavailable parent means a parent or guardian who cannot be involved personally, via telephone or U.S. mail, in planning or monitoring their child's special education program. A parent is considered unavailable if he or she has been prohibited by court order from having contact with his or her child. Parents also may be *unavailable* because of illness, injury, or institutionalization.

Unknown parent means a parent or guardian who cannot be identified by an agency, e.g., those persons or agencies dealing with the child literally do not know the whereabouts of the child's parent or guardian.

Visual impairment means limited vision that interferes with educational and/or developmental progress. Two divisions for the visually impaired can be made.

Partially seeing means those individuals whose visual limitation constitutes an educational handicap, but who are able to use print as their primary educational medium.

Blind means those individuals who must depend primarily upon tactile and auditory mediums for their education. The group may include individuals who have some residual vision, but whose vision loss is so severe that, for educational purposes, print cannot be used as the major medium of learning.

Vocational training means instruction which prepares handicapped individuals for paid or unpaid employment, or which provides additional preparation for a career requiring other than a baccalaureate or advanced degree.

Youth center school means a school that is operated at a state youth center to provide education services to youth admitted to the institution.

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